

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

NOTICE OF HEARING AND MOTIONS

James Bruce Preece,

Defendant.

TO: The debtor and other entities specified in Local Rule 1204(a).

1. Edward F. Klinger, attorney for Central Boiler, Inc., plaintiff in this action, moves the court for the relief requested below and gives notice of hearing.

2. The court will hold a hearing on these motions at **2:30 P.M. on September 22, 2004** in **Courtroom No. 7W at the United States Courthouse, at 300 South 4th Street, Minneapolis, Minnesota.**

3. Any response to these motions must be filed and delivered not later than **2:30 P.M. on September 17, 2004**, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than **September 13, 2004**, which is seven days before the time set for the hearing (excluding Saturdays, Sundays, and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING. IF A HEARING IS HELD, IT SHALL BE HELD TELEPHONICALLY.**

4. This court has jurisdiction over these motions pursuant to 28 U.S.C. §§ 157 and 1334, Fed.R.Bankr.P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this chapter 7 case was filed on July 11, 2003. The case is now pending in this court.

5. These motions arise under 11 U.S.C. § 523 and Fed.R.Bankr.P. 7037 and 7056. These motions are filed under Fed.R.Bankr.P. 9014 and Local Rule 1070-1. Movant requests relief with respect to this case as follows:


A. Granting the moving party summary judgment against the defendant herein.

B. In the alternative, dismissing defendant's answer as a result of defendant failing to comply with discovery.

WHEREFORE, moving party moves the court for an order that holds that the debt owing to the moving party be held non-dischargeable and such other relief as may be just and equitable.

Dated: August 27, 2004

VOGEL LAW FIRM


By 
Edward F. Klinger
Attorneys for Central Boiler, Inc.
215 30th Street North
P.O.Box 1077
Moorhead, MN 56561-1077
(218) 236-6462
Attorney ID No. 56625

VERIFICATION

I, Edward F. Klinger, attorney for the corporation movant named in the foregoing notice of hearing and motion, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on August 27, 2004.

Central Boiler, Inc.

By 
Edward F. Klinger
Its Attorney of Record

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

James Bruce Preece,

Defendant.

STATEMENT OF ISSUE

The sole issue in this case is whether or not the debt due and owing from Helicopter Flight, Inc. to the plaintiff is a personal non-dischargeable debt of defendant, James Bruce Preece.

IDENTIFICATION OF DOCUMENTS

The following documents are identified and are part of the record in resolving the above issue.

1. Copy of pertinent portions of deposition of J. Bruce Preece taken on August 13, 2002.
2. Copy of deposition of J. Bruce Preece taken on August 5, 2004 (presently being transcribed) (to be submitted prior to argument after transcribed).
3. Affidavit of Plaintiff's Representative Dennis Brazier.
4. Copy of Letter dated February 11, 2002, from J. Bruce Preece to Dennis Brazier.
5. Bill of Sale on Robinson R22 Bata.
6. Board of Directors Minutes of Annual Meeting of Sole Shareholder and Member of the Board of Directors of Helicopter Flight, Inc., dated July 30, 2002.
7. First page of 2000 tax return for HFI.
8. First page of tax return of HFI for 2001.
9. Correspondence dated February 7, 2002, from J. Bruce Preece to Dennis Brazier.
10. Seizure Order.
11. Affidavit and attachments of accountant Michelle Benton.
12. State Court Judgment against Helicopter Flight, Inc.
13. Copy of Complaint in companion case.
14. Affidavit of Richard S. Stanger.
15. Affidavit of Ken Schoenfelder.

STATEMENT OF FACTS

This action arises out of a complaint brought by the plaintiff, Central Boiler, Inc. (Central), against defendant, James Bruce Preece (Preece). The complaint states the causes of action under 11 U.S.C. § 523(a)(2)(A), (a)(4) and (a)(6).

The amount of the claim is not in dispute. This amount is \$296,556. This amount was determined pursuant to a judgment entered in District Court in Roseau County, Minnesota, on August 28, 2002. A true and correct copy of the judgment is attached as Exhibit 12, and is also attached as Exhibit "A" to the affidavit of Central's principal officer, Dennis Brazier (Brazier).

Subsequent to the entry of this judgment, and just prior to judgment being entered against the debtor/defendant, the debtor filed his Chapter 7 bankruptcy, and this complaint was brought before the bar date.

The facts of this case are somewhat complicated¹, but based upon the documents which are attached, together with the appropriate affidavits, the following facts can be ascertained. Early in 2002 plaintiff's chief representative, namely Brazier, was contacted by the defendant, president, CEO and sole shareholder of Helicopter Flight, Inc., to possibly purchase, lease or trade in his existing R22 helicopter for an R44 helicopter. The R stands for Robinson, which is a manufacturer of helicopters located in California. The R22, which had previously been sold by HFI to Central had a trade in value of approximately \$90,000, and depending on specification, the R44 helicopter would cost somewhere between \$300,000 and \$350,000. The R22 had been purchased in the early 90s, and after negotiations, HFI placed \$25,000, received from Central Boiler as was required by Robinson,

¹ Many of the facts are included in the affidavits of Dennis Brazier and Michelle Benton as well as the depositions. These facts are incorporated although not specifically alluded to.

to apply towards the purchase of the new helicopter.² In early 2002, Preece represented to Brazier that HFI's business was great³, that there was a new mechanic being hired and new hangar space being utilized. Preece sought to alter the terms of the transaction, which Brazier wanted to trade to be sold and then remit the purchase price for the helicopter, two other kinds of deals, including one that would have had a personal credit to Preece⁴. As Brazier's affidavit states, he only wanted to do a "clean deal" to get the helicopter. Ultimately it was agreed that the R22 owned by Central would be sold, and it was sold, but the \$90,000 in proceeds was neither remitted to Central, nor was it remitted to Robinson for the helicopter. Apparently HFI's bank offset \$50,000 from that, and the other \$40,000 was deposited and used for other HFI business. The additional agreed price of \$181,000 was remitted by Central to HFI and then dissipated⁵. Apparently at the same time as the companion case reveals, HFI and Preece were doing the same type of business with another potential helicopter purchaser, whose proceeds were used for whatever purpose.

The front pages of the tax returns for calendar years 2000 and 2001 demonstrate that HFI was insolvent at the time of these transactions. The documents also show that Preece was the principal officer and sole shareholder of HFI. The transaction demonstrates that HFI immediately utilized the proceeds entrusted to him for other purposes⁶. HFI at the same time was owed a substantial

² It is understood that that \$25,000 went to Robinson and is not at issue here.

³ See affidavit of Dennis Brazier.

⁴ See correspondence attached as Exhibit 9.

⁵ It is instructive to note that a Seizure Order was being entered (Exhibit 10) and Preece was at the same time defrauding another purchaser. See Complaint in companion case and affidavits of Richard S. Stanger and Ken Schoenfelder, attached as Exhibits 13, 14 and 15.

⁶ Preece admitted this in his deposition.

receivable from another corporation owned exclusively and solely by Preece⁷.

The calculation of damages in the amount of \$296,556 is undisputed, and that is the amount that plaintiff is seeking to hold non-dischargeable. Given the lack of factual dispute as to material facts involved, plaintiff believes that it is entitled to summary judgment. Indeed, defendant has admitted that he used the proceeds for other purposes (see page 28 of 8-13-02 deposition attached). The tax returns attached show the severe losses that HFI had incurred in 2000 and 2001, just prior to the early 2002 transaction involved here. Defendant Preece also admitted (state court deposition page 34) that HFI was unable to pay its debts as they came due, a fact that he was aware of. Preece further admitted that there was a corporate tax debt of \$80,000 and creditors were owed \$952,000. The bankruptcy schedules show the number of debts and creditors.

LAW AND ARGUMENT.

Central asserts that the \$296,556 judgment entered against HFI in state court in Roseau County, Minnesota is a nondischargeable debt of Preece. Central's basis for dischargeability are sections 523 (a)(2)(A), (a)(4) and (a)(6) of the Bankruptcy Code. Courts have held that standard of proof for section 523 claims is preponderance of the evidence. Grogan v. Garner, 498 U.S. 279, 286-87 (1991); In re Scarborough, 171 F.3d 638 (8th Cir. 1999). Central brings this summary judgment motion in this proceeding because there are no material factual disputes precluding summary judgment.

A. Standard for Summary Judgment.

Summary judgment is governed by Federal Rule of Civil Procedure 56, made applicable to this adversary proceeding by Bankruptcy Rule 7056. Federal Rule 56 provides:

⁷ This is documented in the August 5, 2004 deposition.

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

The moving party on summary judgment bears the initial burden of showing that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). The burden then shifts to the non-moving party to produce evidence that would support a finding in its favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250-52 (1986). This responsive evidence must be probative, and must "do more than simply show that there is some metaphysical doubt as to the material fact." Matsushita Electric Industrial Co., v. Zenith Radio Corp., 475 U.S. 574, 586 (1986).

B. Preece is the Alter-Ego of the Corporation and under Minnesota Law he is individually responsible for the debts.

Dunnell's has stated the various theories for holding an individual responsible for corporate debt, either as an alter-ego or by piercing the corporate veil.

In Chergosky v. Crosstown Bell, Inc., 454 N.W.2d 654 (Minn.App. 1990), the court stated the rule as follows:

III.

Courts have also relied upon the "alter-ego" or "instrumentality" theory to impose liability on an individual shareholder. * * * Factors considered significant in the determination include: insufficient capitalization for purposes of corporate undertaking, failure to observe corporate formalities, nonpayment of dividends, insolvency of debtor corporation at time of transaction in question, siphoning of funds by dominant shareholder, nonfunctioning of other officers and directors, absence of corporate records, and existence of corporation as merely facade for individual dealings.

Disregard of the corporate entity requires not only that a number of these factors be present, but also that there be an element of injustice or fundamental unfairness.

Victoria Elevator Co. of Minneapolis v. Meriden Grain Co., Inc., 283 N.W.2d 509,512 (Minn.1979) (citations omitted).

[6] Thus, there is a two-prong test to determine whether the corporate veil should be pierced. Under the first part of the test, focusing on the shareholder's relationship to the corporation, eight factors are considered. Under the second prong of the test, focusing on the relationship of the plaintiff to the corporation, an element of injustice or fundamental unfairness is necessary. "To satisfy [the second prong] of the test, 'proof of strict common law fraud is not required, but, rather, evidence that the corporate entity has been operated as a constructive fraud or in an unjust manner must be presented.'" *White v. Jorgenson*, 322 N.W.2d 607,608 (Minn.1982) (quoting *West Concord Conservation Club v. Chilson*, 306 N.W.2d 893, 898 n.3 (Minn.1981). (454 N.W.2d 654, 657-658)

Dunnell's Section 1511 is in accord, but also allows the consideration of fraud to be considered.

Minnesota bankruptcy courts have held that principals bear personal responsibility when collateral is sold outside of the agreement between the parties and if the funds were used for the principal's own private uses or business ventures. See e.g. In re Peterson, 1989 WL 72264 (Bankr. D. Minn. 1989)

Here, the evidence is substantial that Preece was substantially involved in running HFI. In fact, he was the only person in charge at the relevant times. Preece intentionally sold HFI's funds to be held in trust for Robinson and used the funds for business and personal uses. Moreover, HFI was grossly undercapitalized, the corporate principal apparently was self-dealing with the corporation, and the corporation was merely a facade for individual dealings. The actions of Preece operate as a constructive fraud with respect to the plaintiff.

Accordingly, the corporate veil should be pierced, and Preece should be individually liable for the corporate debt of HFI, which has been ascertained by virtue of the judgment which was entered against HFI on August 28, 2002.

C. Central's Claim Is Not Dischargeable Because Preece obtained Central's property and money by false pretenses, false representation, and actual fraud.

Section 523(a)(2)(A) provides that certain debts are not dischargeable when money, property has been obtained by false pretenses, a false representation, or actual fraud. To establish fraud within the context of this section, Central must prove the following elements by a preponderance of the evidence:

1. The debtor made a representation.
2. The debtor knew the representation was false at the time it was made.
3. The representation was deliberately made for the purpose of deceiving the creditor.
4. The creditor justifiably relied on the representation.
5. The creditor sustained the alleged loss as the proximate result of the representation having been made.

In re Maurer, 256 B.R. 495 (B.A.P. 8th Cir. 2000).

Applying those factors to the instant case, Preece's conduct was fraudulent. The undisputed evidence shows that Preece represented to HFI that he was a bona fide agent of Robinson, was in a fiduciary relationship to Central Boiler⁸, that the funds were to be held in trust for purposes of the purchase of the helicopter from Robinson, that he had no problems with Robinson, that HFI was solvent, and that any deal made between Central Boiler and HFI was protected because of the solvency of HFI. He attempted to make the arrangement more of a credit arrangement but when Brazier indicated an unwillingness to enter into a credit arrangement with HFI, then Preece represented that he was simply an agent of Robinson.

⁸ To remit proceeds and trade in received for a specific purpose.

Preece's intent can be established by circumstantial evidence. In re Bren, 284 B.R. 681, 693 (Bankr. D. Minn. 2002) ("Intent to deceive will be inferred where a debtor makes a false representation and the debtor knows or should have known that the statement will induce another to act"). Here, Preece should have known that his statement that he was an agent of Robinson's would induce Central to provide the down payment and the helicopter. There can no other reason for this misrepresentation other than Preece's intent to deceive HFI to obtain its money and property.

Given the representations made by Preece, Central had no reason to disbelieve Preece and justifiably relied upon Preece. As a result of this fraudulent conduct, Central sustained loss stated in the judgment entered in Roseau County. Central's claim is not dischargeable.

D. Central's Claim Is Not Dischargeable Because Preece willfully and maliciously injured Central.

Section 523(a)(6) provides that debts "for willful and malicious injury by the debtor to another entity" are not dischargeable in bankruptcy. Willfulness has been defined as "headstrong and knowing conduct. In re Scarborough, 171 F.3d 638 (8th Cir. 1999). Malicious has been defined as conduct which has been done with an intent to harm which may be targeted at the creditor at least in the sense that the conduct is certain or almost certain to cause financial harm. Id; In re Long, 774 F.2d 875, 881 (8th Cir. 1985).

In this case, Preece's intentional conversion of Central's deposit and helicopter satisfies Section 523(a)(6) requirements. In this case, Preece purposefully diverted funds from the sale of the helicopter and the deposit to other creditors and to himself personally. The evidence establishes that Central's funds were used to pay other creditors. Additionally, the material submitted in the other adversary proceeding (See Exhibits 13, 14 and 15) shows Preece's pattern of conduct. Moreover,

Preece's conversion of Central's deposit and helicopter was certain or almost certain to cause financial harm to Central because it would not get what it paid for, a R44 helicopter.

E. Central's Claim is Not Dischargeable Because Preece Embezzled Central's Funds.

Section 523(a)(4) does not allow for discharge when money or property has been embezzled. Embezzlement is the "fraudulent appropriation of property by a person to whom such property has been entrusted or, into whose hands it has lawfully come. In re Koelfgen, 87 B.R. 993, 997 (Bkcty. D. Minn. 1988). The elements of embezzlement are (1) appropriation of funds by debtor for his benefit, and (2) appropriation of funds with fraudulent intent or deceit. Id. If the debtor has appropriated funds for his own benefit and has done so with fraudulent intent or by deceit the creditor does not have to prove no more. In re Hoffman, available at 1988 WL 102836 (Bankr. D. Minn. 1988).

Here, Preece was well aware that the down payment and helicopter which was traded in was given to him to be held in trust because he was represented to be an agent of Robinson. Preece's failure to disclose that the down payment and traded helicopter were being sold and used by Preece for general business purposes shows intentional deception and fraud. In re Hoffman, available at 1988 WL 102836 (Bankr. D. Minn. 1988) citing In re Hoffman, 70 B.R. 155, 163 (Bkcty. W.D. Ark. 1986). Even though some of the funds obtained by Preece from Central may have been used for business debts or to continue operations, this is no defense to embezzlement. Id. Preece's conduct was misleading and surreptitious.

CONCLUSION

The above facts show that the debt incurred by HFI was really defendant Preece's because HFI, the alter ego of Preece, obtained the funds from Central Boiler under false pretenses, false

representation or actual fraud. The above facts also demonstrate sufficient facts to hold the debt non-dischargeable as to Bruce Preece for fraud under (a)(4) and (a)(6). For the reasons stated above, it is respectfully submitted that judgment be entered against Preece for \$296,556 and interest, costs and disbursements.

Dated this 27th day of August, 2004.

Respectfully submitted,

VOGEL LAW FIRM

By 

Edward F. Klinger

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Page 3

1 STATE OF MINNESOTA IN DISTRICT COURT
2 COUNTY OF ROSEAU NINTH JUDICIAL DISTRICT
3 Civil No. C1-02-00369

4 Central Boiler, Inc.,

5 Plaintiff,

6 vs.

7 Helicopter Flight, Inc.
8 and J. Bruce Preece,

9 Defendants.

12 D E P O S I T I O N

13 of

14 J. BRUCE PREECE

15 August 13, 2002

16 1:25 o'clock p.m.

18 Taken at:

19 Gunhus, Grinnell, Klinger,
20 Swenson & Guy Ltd
21 215 30th Street North
22 Moorhead, Minnesota

23 REPORTER: DOUGLAS T. KETCHAM

25 (PURSUANT TO NOTICE)

1 I N D E X

2 WITNESS PAGE NO.

3 J. BRUCE PREECE
4 Examination -- By Mr. Klinger 4

10 E X H I B I T S

11 EX. NO. MARKED

12 Deposition Ex. No. 1 4
13 Deposition Ex. No. 2 4
14 Deposition Ex. No. 3 4
15 Deposition Ex. No. 4 4
16 Deposition Ex. No. 5 4
17 Deposition Ex. No. 6 4
18 Deposition Ex. No. 7 4
19 Deposition Ex. No. 8 4
20 Deposition Ex. No. 9 4
21 Deposition Ex. No. 10 4
22 Deposition Ex. No. 11 20
23 Deposition Ex. No. 12 20
24 Deposition Ex. No. 13 20
25 Deposition Ex. No. 14 27

EXHIBIT

1

Page 2

Page 4

1 A P P E A R A N C E S

3 EDWARD F. KLINGER

4 Attorney at Law

5 of

6 GUNHUS, GRINNELL, KLINGER,

7 SWENSON & GUY, LTD.

8 215 30th Street North

9 P.O. Box 1077

10 Moorhead, Minnesota 56561-1077

11 COUNSEL FOR PLAINTIFF

12 RICHARD J. GABRIEL

13 Attorney at Law

14 Suite 114

15 Riverwood Place

16 880 Sibley Memorial Highway

17 Mendota Heights, Minnesota 55118-1736

18 COUNSEL FOR DEFENDANTS

1 WHEREUPON,

2 the following proceedings were had,

3 to-wit:

4 (Deposition Exhibits No. 1 through
5 10 were marked for identification.)

6 J. BRUCE PREECE, a witness, called
7 by the Plaintiff, being first duly sworn,
8 testified on his oath as follows:

9 BY MR. KLINGER EXAMINATION

10 Q. Bruce, I'm going to ask you to
11 state your full name and address.

12 A. James Bruce Preece, P-r-e-e-c-e.
13 I have a mailing address of Post Office Box
14 1099, Bemidji, Minnesota, 56601.

15 Q. And why don't you tell me -- I
16 know some of your background, obviously. Why
17 don't you just give me your background through
18 the end of you're being with the BCA.

19 A. I retired from the BCA in March
20 2nd of 19, excuse me, of 2001 and became the
21 Director of Public Safety for the City of
22 Bemidji in March 5th, 2001 and I currently
23 hold that position.

24 Q. When did you get involved in
25 helicopters? Tell me about your background

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1 with helicopters.

2 A. Okay. I began to fly or learned
3 to fly helicopters back in the mid '80's
4 around, around 1989 with a company that I was
5 renting from, or learning to fly helicopters,
6 went out of business. I purchased the
7 business, started my own flight school.

8 Q. When did you purchase the
9 business?

10 A. 1989. Probably more correctly
11 stated I should say that I started the
12 business. I really didn't, other than buying
13 some tools and some equipment, I really didn't
14 buy the business in name, I just took over the
15 business in 1989.

16 Q. Was that, had it been previously
17 named Helicopter Flight?

18 A. No. I believe it was called
19 Classic -- they went under three different
20 names in the last couple years. I believe the
21 last name was Classic Aviation.

22 Q. The corporate books shows that
23 Helicopter Flight was organized and a
24 certificate issued in March of 1989.

25 A. Correct.

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1 Q. And that's the name you've
2 operated as since that time?

3 A. Yes.

4 Q. And just skimming the minutes
5 before I sent them to be copied, you are the
6 sole shareholder?

7 A. Yes, I am.

8 Q. Have you been the sole shareholder
9 since 1989?

10 A. Yes.

11 Q. Are there any persons who are
12 directors aside from you?

13 A. No.

14 Q. Any persons who are officers aside
15 from you?

16 A. No.

17 Q. Has there been anybody who's been
18 and officer or director aside from you since
19 1989?

20 A. One of my individuals served as a
21 vice-president, although a nonvoting member.
22 I'd have got to remember. It was sometime
23 ago.

24 MR. GABRIEL: That would be
25 reflected in the books of the corporation, is

1 that right?

2 THE WITNESS: Yes.

3 Q. Let's say at the beginning of
4 calendar year 2000, how many employees for
5 2000?

6 A. Beginning of 2000?

7 Q. Yes.

8 A. Somewhere, 30 some employees, I
9 believe.

10 Q. And what did they -- tell me about
11 the business so I understand.

12 A. What we do?

13 Q. Yes.

14 A. Or did. Helicopter Flight is a
15 commercial aviation company, primarily
16 operating helicopters. We are licensed to
17 operate as a commercial aviation operator in
18 the State of Minnesota. We also had
19 permission to operate in a number of other
20 states. Up through, and you're talking about
21 the year 2000, we were involved in operating
22 helicopters for the seven different TV
23 companies in various cities around the United
24 States, operating ENG, electronic news
25 gathering, in Minnesota for KMSP and also for

1 WCCO.

2 Q. They would lease services?

3 A. Lease the services. They had
4 their own helicopters, we would provide pilot
5 and maintenance service, and that's what we
6 did with the other TV stations throughout the
7 United States that we had contracts with.

8 Q. So you didn't own helicopters?

9 A. Right. We just provided the
10 maintenance and service for those companies,
11 or various TV stations, including WCCO and
12 channel 9 in Minneapolis.

13 In addition to that we operated a
14 helicopter flight school and that was the
15 primary basis of the company since 1989 as a
16 flight school. That's how the company got
17 started. And we continued to do that through
18 currently.

19 We also fly contracts for various
20 companies such as Xcel Power Company, Viking
21 Gas, transmission line.

22 Q. Would you use your own helicopters
23 or their helicopters?

24 A. In some cases it would be
25 helicopters that we owned or helicopters on

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1 lease to our company.

2 Q. How many helicopters would you
3 own? I'm using you and the company in
4 dispersing that for the purpose of
5 simplicity. How many helicopters would you
6 own at one time?

7 A. I didn't own any helicopters
8 personally but Helicopter Flight did.

9 Q. I meant that.

10 A. Helicopter Flight varied from time
11 to time because we buy and sell helicopters.
12 Maybe to give you an average over the last
13 three years, we probably owned somewhere
14 between three and four helicopters at any
15 given time and we would lease somewhere
16 between two and three helicopters at any given
17 time. That would be the general ratio of the
18 amount of ownership in our business that we
19 were actually involved in buying and selling
20 helicopters. There has been times we have
21 been down to owning one. The most we ever
22 owned at any given time would be maybe seven
23 or eight.

24 Q. Now we know from this case that
25 you dealt with Robinson as a vendor of new

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1 helicopters. Any other companies you dealt
2 with on a regular basis like Robinson?

3 A. No. The only aircraft dealership
4 we held was Robinson Helicopters. We do with
5 other companies as far as parts acquisition
6 and service. That would be companies like
7 Bell Helicopters or Air Special. They're
8 called Eurocopters. We do maintenance work in
9 conjunction with those companies. We don't
10 either own a service center or a dealership or
11 those other helicopter companies.

12 Q. All the helicopters you bought or
13 sold were Robinson?

14 A. Correct.

15 Q. And who was the primary person you
16 dealt with the past three years?

17 A. At Robinson Helicopter Company?

18 Q. Yes.

19 A. Sales representative was Milly
20 Donahue was my primary contact. Most of my
21 orders were addressed to her. Okay. I would
22 deal with Curt Robinson who is the son of
23 Frank Robinson, the owner of the company. I
24 think he's the vice-president of
25 consumer -- I'm not sure what his title is.

1 He's the vice-president. Okay. Very rare
2 occasion I would deal with Tim Goetz, Director
3 of Marketing and also serves as their legal
4 counsel.

5 Q. Now one of the issues I see in
6 this case is you are an authorized dealer
7 for --

8 A. I was, yes.

9 Q. Were there times when you ceased
10 being a dealer for Robinson?

11 A. Yes. They did not renew my
12 dealership effective the end of 2001. They
13 kept us in what they call an, I can't remember
14 the title. It's a suspended dealership
15 through February because the business was in,
16 essentially being sold or in the process of
17 being sold and they were going to continue the
18 dealership to the new owner. They kept it in
19 force but we weren't considered a listed or
20 active dealer.

21 Q. The documents would show
22 correspondence with Robinson over those
23 issues.

24 A. In regards to that I may have some
25 letters with Tim Goetz, yes.

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1 Q. Could you give those to Mr.
2 Gabriel and we'll make a list.

3 A. Yes.

4 Q. Your testimony is even though you
5 were terminated as an authorized dealer toward
6 the end of 2001, you were able to place orders
7 into February of 2002?

8 A. I think I took an order, the last
9 R44 order was sometime in February. I have
10 done some negotiations since then. I have
11 within a few months ago received
12 correspondence and sales referrals from
13 Robinson and I think I have copies of those.

14 Q. Just as a jump ahead a little bit,
15 part of this transaction that we're here for,
16 \$25,000 of Central Boiler's money was remitted
17 to Robinson.

18 A. Right.

19 Q. And can you agree that that was
20 the only amount of the money received from
21 Central Boiler on the R44 that was in fact
22 remitted to Robinson?

23 A. Correct.

24 Q. Again, to jump head, until I see
25 some more documents, as part of this

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1 transaction there was an R22 traded in?
 2 A. Yes.
 3 Q. And the credit that was to be
 4 given on the R22 was \$90,000?
 5 A. Correct.
 6 Q. Now was, who was the R22 sold to?
 7 A. Gentlemen by the name of Bruce
 8 Carr, C-a-r-r.
 9 Q. And where does Mr. Carr live?
 10 A. I believe he lives in a town of
 11 Otter Tail. Close to Fergus Falls.
 12 Q. Now what was the sale price of the
 13 R22 to Mr. Carr?
 14 A. 95,000.
 15 Q. And it was understood between
 16 yourself and Dennis Brazier that that
 17 \$90,000,, that \$90,000 was to be applied to
 18 the purchase to be remitted to, the fee
 19 remitted to Mr. Robinson?
 20 A. That's correct.
 21 Q. And in fact none of that money was
 22 sent to Robinson.
 23 A. Not that I'm aware of, no.
 24 Q. Did Mr. Carr give you a check for
 25 the purchase of the R22?

1 specifically earmarked to go to Robinson as
 2 purchase of the R44 that Central Boiler was
 3 giving --
 4 A. That is true.
 5 Q. In fact, that money did not go to
 6 Robinson?
 7 A. Not that I'm aware of, no.
 8 Q. How would it have been sent, for
 9 you or HFT?
 10 A. That or the bank sent the money.
 11 Q. Why would the bank send the
 12 money? The money is, as I looked at the
 13 checking records that you provided to me, I'm
 14 going to show you what's been marked as
 15 Exhibit No. 3. Is that a record from HFT?
 16 A. Yes.
 17 Q. There is a deposit of \$5,000.
 18 Would that originate from the R22 that was
 19 sold to Mr. Carr?
 20 A. That originated from a loan Mr.
 21 Carr applied for to purchase the R22, and
 22 those funds were to be sent to Robinson
 23 Helicopter Company.
 24 Q. They went into HFT's account?
 25 A. They went in and came out, yes.

Page 14

Page 16

1 A. No.
 2 Q. Now did he pay that, do you know?
 3 A. He purchased, he put a deposit on
 4 another R22 that we had for sale and as I
 5 recall the amount was 25 or \$30,000. Upon
 6 seeing Mr. Brazier's helicopter, he asked if
 7 he could buy that aircraft instead. We told
 8 him he could. We would sell his aircraft and
 9 exchange the funds and apply it to Mr.
 10 Brazier's helicopter, R22, if it could be done
 11 in a fairly expedient fashion. He then needed
 12 funding or financing for the balance and we
 13 referred him to Security State Bank, the bank
 14 we had dealt with on aircraft loans in the
 15 past at Bemidji, Minnesota. And Mr. Carr met
 16 with the bank on his own and applied for
 17 funding.
 18 Q. How much cash came in to HFT?
 19 A. Either 10 or 15,000 actual cash.
 20 Q. Your dealing with Central Boiler,
 21 was that \$90,000 was to go to Robinson?
 22 A. \$90,000 to the credit of Mr.
 23 Brazier was going to go towards the purchase
 24 of his --
 25 Q. Right. That money was

1 Q. Where did they go out to?
 2 A. The bank applied them to some
 3 loans that we had.
 4 Q. So they did an offset?
 5 A. I guess that's what it's called.
 6 Q. Did you discuss with the bank what
 7 had happened?
 8 A. Well, after about four or five
 9 days after I was aware Mr. Carr had closed the
 10 loan. Mr. Carr had called me either the day
 11 or the day after, advised me that he closed on
 12 a purchase and he had purchased the R22. I
 13 waited a couple days to contact the bank. I
 14 contacted the bank and asked them what the
 15 status was because I hadn't seen any receipts
 16 or transfers. The gentleman I was dealing
 17 with, the name is Ryan Bear. The president of
 18 the bank said that his father advised them
 19 they had taken transfers of funds and paid off
 20 some loans.
 21 Q. In any event, of the \$90,000 that
 22 was supposed to be applied to Central Boiler's
 23 purchase from the trade-in of \$40,000,
 24 apparently it was used by HFT for other
 25 purposes and \$50,000 was offset by the bank,

Page 17

1 is that a fair statement?
 2 A. Yes.
 3 Q. And as the person who was dealing
 4 with this transaction, you knew certainly the
 5 \$40,000 had to go to Robinson?
 6 A. \$40,000 was to go to Robinson,
 7 yes.
 8 Q. You did not do that?
 9 A. No.
 10 Q. The bank has obtained a Seizure
 11 Order, and I'll show you what's been marked as
 12 Deposition Exhibit No 2. Is that a current
 13 copy of the Seizure Order?
 14 A. Yes.
 15 Q. Now just so that I understand and,
 16 maybe it will help if we look at Exhibit No.
 17 6. That's the UCC's on HFI. The bank had the
 18 first security interest in all the assets of
 19 HFI.
 20 A. I believe they did, yes.
 21 Q. Aside from the real estate, and
 22 we'll talk about that, what assets does HFI --
 23 A. Aside from when?
 24 Q. Aside from the land, they own some
 25 land?

Page 18

1 A. And buildings.
 2 Q. What other assets are --
 3 MR. GABRIEL: Objection as to
 4 relevance. Counsel, we are not going to do a
 5 supplementary proceeding here. I'll have a
 6 continued objection as to assets inquiry.
 7 MR. KLINGER: There is a fraud
 8 claim here and our assets, the money that he
 9 was paid obviously went into other assets and
 10 I want to find out this information if we are
 11 going to get this thing resolved. You can
 12 instruct him not to answer. I'm not going to
 13 go into it too deeply. I just want to find
 14 out what's going on. I'll ask the question
 15 and you can give --
 16 MR. GABRIEL: I will allow you some
 17 leeway.
 18 Q. What kind of assets does HFI have
 19 aside from the building at the present time?
 20 A. It has tools, parts, aircraft
 21 parts, it has some machinery. It has two
 22 vehicles. It has, in addition to these assets
 23 listed, is that what --
 24 Q. All assets aside from the
 25 building.

Page 19

1 A. Four R22 helicopters.
 2 Q. What value do you place on the
 3 four R22's? Must be an asset --
 4 A. A couple hundred thousand dollars.
 5 Q. And how much tangible equipment
 6 and parts?
 7 A. Four hundred, \$500,000.
 8 Q. And the building?
 9 A. Five hundred thousand dollars..
 10 Q. What debts does it owe at present?
 11 A. About \$952,000, including the debt
 12 on your aircraft.
 13 Q. I'm going to be asking you some
 14 questions about transactions. How many
 15 different individuals does HFI owe as a result
 16 of helicopter sales?
 17 MR. GABRIEL: Objection. Again, as
 18 to relevance, counsel. Let's move on on that
 19 basis. Instruct you not to answer.
 20 MR. KLINGER: Again, I'll have to
 21 get into the fraud aspects of it. The other
 22 transaction is, I think it will be relevant
 23 there. We'll move along as we can here.
 24 Q. I'm going to show you what's been
 25 marked as Deposition Exhibit No. 4, and it

Page 20

1 shows that you received a copy of this
 2 letter. Is it true that you did receive a
 3 copy of that letter?
 4 A. Yes. I remember this letter.
 5 Q. Let's mark this.
 6 (Deposition Exhibits No. 11, 12
 7 and 13 were marked for identification.)
 8 Q. I'm going to show you what's been
 9 marked as Exhibit No. 13 which purports to be
 10 a tax return for calendar year 2001 for HFI.
 11 Does this appear to be a copy of that tax
 12 return?
 13 A. Yes, it does.
 14 Q. Let's turn to Schedule L of that
 15 return. Are you familiar with how to read the
 16 balance sheets on the tax returns? What does
 17 it show as the equity in that corporation on
 18 the tax return?
 19 A. Be \$828,000.
 20 Q. What does it show for the loss of
 21 2001? You'd have to look at the first page.
 22 A. I think it's right here. 376,000..
 23 Q. Show you what's been marked as
 24 Exhibit No. 12. Is that a true and correct
 25 copy of the 2000 tax return?

Page 21

Page 23

1 A. Yes.

2 Q. I'm going to show you what's been
3 marked as Exhibit No. 11 and ask, is that
4 a -- your attorney has stated that his office
5 copied the corporation records. Does that
6 appear to be the corporation records?

7 A. Yes, it does.

8 Q. Did you have -- who's Scott
9 Schramm?

10 A. He's the director of operations
11 for the company, which is Helicopter Flight.

12 Q. How long has he been employed by
13 you?

14 A. Full time, part time about 10
15 years.

16 Q. He lives in the Twin Cities?

17 A. Yes.

18 Q. How many employees does Helicopter
19 Flight have at the present?

20 A. Five, six.

21 Q. Who are they and what are their
22 positions?

23 A. Scott Schramm director of
24 operations, a bookkeeper by the name of Bev.
25 I can't remember her last name. We have two

1 operated or been an investor in any other
2 business besides this one?

3 A. No. I take that back. That's not
4 correct. I do own two other companies.

5 Q. What companies are those?

6 A. One's called Aircare Executive
7 Charter. Its a fixed wing business. Pretty
8 much out of business. It's not operating.
9 And another business called HFI. That's the
10 manager of the Moorhead airport.

11 Q. The one up here?

12 A. Yes.

13 Q. And besides a large business?

14 A. It's a small business that
15 operates a couple airplanes, couple flight
16 instructors and a full-time mechanic.

17 Q. That's a corporation?

18 A. Yes.

19 Q. Who's president --

20 A. HFI Services.

21 Q. Any Inc. or company?

22 A. HFI Information Services, Inc., I
23 believe.

24 Q. Are there any other shareholders
25 in that corporation?

Page 22

Page 24

1 pilots and a part-time mechanic.

2 Q. Is the corporation able to keep
3 going now? Is there any funding for the
4 corporation?

5 A. Yes. The business is, which was
6 very difficult, obviously we have a lot of
7 debt, the company is surviving day to day.
8 Business has been fairly active.

9 Q. 2001 you show salaries paid of
10 331,000. What salary, if any, did you draw
11 out of the corporation in 2001?

12 A. 2001?

13 Q. Yes.

14 A. Total of \$10,000. Prior to that I
15 didn't take any salaries from the company. I
16 get a check of \$500.00 ever two weeks.

17 Q. Plus expenses, obviously.

18 A. No.

19 Q. Didn't draw expenses?

20 A. The expenses that I receive are
21 motel expenses, you know, when I go to the
22 Cities or if I travel to a training, you know,
23 for training, which I haven't seen for a
24 year.

25 Q. During the last ten years have you

1 A. No.

2 Q. When did you first become
3 acquainted with Dennis Brazier?

4 A. I believe around 1994.

5 Q. Tell me the circumstances of
6 that.

7 A. I believe he called us looking, or
8 interested in purchasing a helicopter and
9 right around that time period we ordered a new
10 helicopter and he ordered one from our
11 company. That's an R22.

12 Q. Tell me for to record, obviously
13 we have R22 and R23. What other --

14 A. Just those two, those two models.

15 Q. R stands for Robinson?

16 A. Yes.

17 Q. Obviously, the R44 is much bigger
18 and much more expensive?

19 A. Yes.

20 Q. What is the difference between
21 those?

22 A. Passengers or --

23 Q. Yes.

24 A. R22 is a light weight helicopter,
25 two blade system, cruises about 108 miles an

Page 25

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1 hour, carries about 110 pounds. Current
2 average price new, about 160, 160,000 plus.
3 R44 is a four seat helicopter, two blade
4 system, considered a medium weight. It's more
5 a piston helicopter, piston engine, cruises
6 about 130 miles an hour. Carries
7 approximately 100 pounds payload.

8 Q. Is that besides the people sitting
9 in?

10 A. No. That's people. Payload isn't
11 what I consider people. 800 pounds of people
12 or freight, and/or. General pricing on an R44
13 right now is around \$300,000.

14 Q. Does Robinson have helicopters on
15 assembly line at all or do they wait until
16 orders come in?

17 A. They typically wait for orders but
18 they typically, there is always orders. I
19 mean, they produce a couple hundred a year.
20 The R44's, they're the largest manufacturer of
21 helicopters in the world. They do spec orders
22 on occasion, particularly when it comes to
23 special helicopters like special type
24 helicopters with special equipment and they
25 sometimes spec those out and put them on the

1 initial discussion was a purchase of R44. At
2 some point Dennis made a decision to trade in
3 the R22. That wasn't the first discussion we
4 had.

5 Q. Did you bring your file on this
6 purchase?

7 A. I believe, I believe I have some
8 of it here.

9 Q. I want to make sure you look at it
10 to make sure you're not giving me stuff from
11 your own.

12 Let me see what you have got.

13 A. This is the design that was sent
14 to counsel.

15 (Deposition Exhibit No. 14 was
16 marked for identification.)

17 Q. Maybe it would help if you look at
18 the copy of the documents while I'm asking the
19 questions. Exhibit 14 is the documents you
20 just provided today. The first page is a
21 letter to me. The second page is a letter
22 dated June 3rd of 2002 written to you by
23 accounts receivable person at Robinson stating
24 that there is \$274,504.44 due and owing, you
25 see that?

Page 26

Page 28

1 assembly line.

2 Q. Tell me in your own words what led
3 to the commencement of negotiations for the
4 purchase of R44 by someone in --

5 A. They called. I believe he first
6 called my director of operations, Scott
7 Schramm, and came to me and said he's
8 interested in buying an R22 and buying an R44.

9 Q. Approximately when did that occur,
10 knowing it occurred in February of 2002.

11 A. I want to say the initial
12 discussion took place before the first of the
13 year. Approximately during that time frame.

14 Q. Were there negotiations and
15 discussions concerning options, delivery dates
16 and prices?

17 A. Yes.

18 Q. Who did those negotiations occur
19 between?

20 A. Through me.

21 Q. And was there an immediate
22 decision that the R22 would be traded for the
23 R44?

24 A. I don't remember. It's a
25 different memory right now but I believe the

1 A. Yes.

2 Q. Is that account receivable
3 referring specifically to the helicopter
4 that's the subject of this lawsuit?

5 A. Yes, it does.

6 Q. So it's safe to say that Robinson
7 received 25,000 but you were supposed to remit
8 to them 271,247.46 by --

9 A. That's correct.

10 Q. Is it safe to say that the 271,000
11 was used for other purposes, other business
12 purposes?

13 A. Yes.

14 Q. And the next page is a letter from
15 me.

16 The fourth page is also a letter
17 from me.

18 The fifth page is a letter that
19 you received addressed to me from a Tim Goetz
20 reflecting the fact that \$25,000 had been
21 remitted but nothing else had?

22 A. Correct.

23 Q. Next page is a letter from me
24 dated May 6th.

25 I assume the next page, which is a

Page 29

Page 31

1 letter dated May 3rd, is similar to the letter
2 of June 3rd from Robinson also discussing the
3 amount that was due and owing on the R44?

4 A. Yes.

5 Q. The next page is a title to the
6 R22 that was provided?

7 A. Yes, it is.

8 Q. And it was signed by Dennis
9 Brazier and transferred to Mr. Carr?

10 A. Yes.

11 Q. Was Dennis nervous about
12 transferring title to that without receiving
13 his helicopter?

14 A. Yes.

15 Q. What did he express to you?

16 A. He just wanted to make sure that
17 the money would be applied to the helicopter
18 when he signed off on this. I assured his
19 bank, as I understand it, talked to Security
20 State Bank to assure that.

21 Q. And in fact \$50,000 was offset by
22 the bank but the other \$40,000 was used for
23 HFI's business purposes otherwise?

24 A. Yes.

25 Q. You'd agree with me that your

1 received from Brazier?

2 A. Yes.

3 Q. On this helicopter. So that I'm
4 clear, if HFI contributed no dollars to this
5 helicopter -- let me rephrase the question.
6 Did any funds go from HFI to Robinson for the
7 purchase of the R44, series number MR15?

8 A. 25,000.

9 Q. But that's money you were
10 basically the conduit for?

11 A. That's right.

12 Q. But HFI expended none of its
13 funds?

14 A. None of its funds, no.

15 Q. But received some 290,000 some in
16 value -- let me ask you a different question.
17 In the Complaint we say there is 296,000 owing
18 that Central Boiler expended for this
19 helicopter. Do you disagree with the numbers
20 in the Complaint. If I'm not being clear, let
21 me know. Let me put it to you this way: What
22 do your records show was paid to you by
23 Central Boiler, including the R22?

24 A. 90,000, right, value.

25 Q. Or credit given, it would be the

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Page 32

1 utilizing the funds in that way was a
2 misrepresentation to him?

3 A. No. He was advised in the
4 beginning that funds would be invested in the
5 helicopter --

6 Q. The \$90,000 also?

7 A. I don't recall the details of that
8 conversation.

9 Q. The next page which is the
10 invoice, is an invoice. Tell me what that
11 is. Dated March 15th, 2002.

12 A. It's the aircraft invoice.
13 Delivery time and invoices for that particular
14 helicopter.

15 Q. That would be your price, the
16 price you had to pay?

17 A. Yes. The --

18 Q. You were aware --

19 A. What line are you referring to?

20 Q. Let's do it --

21 A. The net balance due is 271,643 on
22 this request.

23 Q. And is that what you were to pay?

24 A. Correct.

25 Q. Or to remit from funds that you

1 R22, 25,000 deposit.

2 A. And balance of 181,414 in cash.

3 Q. Turning to the next page of
4 Exhibit 14, it's a letter dated February 11th,
5 2002 from yourself to Dennis. That reflects
6 the number that in fact you just gave us,
7 right?

8 A. Right.

9 Q. The next page of Exhibit 14 is a
10 letter dated February 7, 2002 espousing the
11 purchase with Dennis.

12 A. Yes.

13 Q. The page after that, and I guess
14 we are going in reverse chronological order
15 here, is a letter to Dennis from you dated
16 January 26th.

17 A. Yes.

18 Q. That deal never took place, did
19 it? There was no credit toward the purchase
20 of a furnace or anything?

21 A. No, it did not.

22 Q. Turning to the next page, was this
23 an initial purchase order with --

24 A. Yes.

25 MR. GABRIEL: It is.

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1 Q. Dated January, 2002?
 2 A. I believe it is.
 3 Q. Then there is a letter, or
 4 document entitled 15 January 2002 for the
 5 Raven and Clipper. This would be just a
 6 general price list?
 7 A. That's correct.
 8 Q. The next page is an invoice
 9 January of 1994. Would this have been the
 10 purchase of the R22?
 11 A. Yes.
 12 Q. And the page before that, the last
 13 page of this document, there is a letter dated
 14 November 30th of 1993 reflecting the initial
 15 inquiry on the R22.
 16 There were some points in this
 17 transaction where you, at least according to
 18 your answer in a letter, you had discussions
 19 with Dennis about departing some of the sale
 20 of the R44 into another helicopter and you get
 21 a little bit more of a discount. Tell me what
 22 led to that discussion.
 23 A. We had actually two, as I recall
 24 at that time, two helicopters that we had.
 25 One was a freight and one was to cancel order

1 We said we were struggling as a result of
 2 9-11.
 3 Q. How had 9-11 affected you?
 4 A. Immediately after, immediately the
 5 day of 9-11 the FAA shut down all metropolitan
 6 airports across the United States. We fall
 7 into class B air space. We came to a
 8 standstill, I want to say from the end of
 9 November to first part of December, and only
 10 to a limited degree, it wasn't actually until
 11 January or first week of January that we were
 12 back up to full operation in all aspects.
 13 Q. What financially did that cost
 14 you? I see in your tax returns, I think 2001
 15 you had a loss of about 375,000 and in '91 the
 16 loss was about 185,000. Is the difference
 17 attributable to that?
 18 A. 2000 tax return certainly included
 19 depreciation. 2002 actual cash loss was
 20 certainly close to 400,000.
 21 MR. KLINGER: Let's take a five
 22 minute break.
 23 (Recess taken.)
 24 MR. KLINGER: Back on the record.
 25 Q. Did you have discussions with

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1 from the customer and we couldn't fit the
 2 financial for us to purchase the helicopter on
 3 our own. He wanted to get the price down. I
 4 said suppose we can take and invest in the
 5 helicopter resulting in a profit, would result
 6 in a helicopter for him. That would have been
 7 in February. I believe it was in that time
 8 frame.
 9 Q. Would it be safe to say as of the
 10 beginning of the year of 2002 the company was
 11 strapped?
 12 A. 2002. How did you put that?
 13 Q. Cash strapped.
 14 A. Cash dropped?
 15 Q. Strapped.
 16 A. Strapped. Yes. Yes.
 17 Q. And that it was unable to pay
 18 bills as they were coming due and meet its
 19 obligations?
 20 A. Yes. We had difficulties.
 21 Q. Did you express to Dennis the
 22 depth of the financial problems that the
 23 company was having?
 24 A. No. He did inquire though. He
 25 asked if we were having financial problems.

1 Dennis concerning a repossessed R44 that he
 2 wanted to purchase?
 3 A. That was one of them, yes. Not
 4 repossessed, canceled order.
 5 Q. Tell me where that order came
 6 from. The serial number was 240RM.
 7 A. It was an aircraft that a customer
 8 took delivery, was going through a divorce,
 9 wanted to cancel or turn back the order.
 10 Didn't want to take the aircraft. Actually
 11 took it and had it 30 days and returned it to
 12 us. We wanted to buy it. He just wanted to
 13 get rid of it for what he owed the bank and I
 14 think it was -- try to remember exactly.
 15 Seems to me it was about 280 or 290,000.
 16 Close to 300,000.
 17 Q. What would have been the book?
 18 Are there books like car books for values of
 19 helicopters?
 20 A. Uh-huh.
 21 Q. What was the book value of the R22
 22 that Central Boiler traded in?
 23 A. There is what they call an
 24 aircraft blue book. It was, particularly with
 25 Robinson Helicopters do not tend to be very

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1 accurate. Essentially what we do is we use a
2 market value of, we take the banks that are
3 involved in aviation loans, use a value of,
4 they take the retail value of the aircraft,
5 subtract three percent and then they deduct
6 \$45.00 an hour used on the aircraft and that's
7 general formula. But it can go \$10,000 either
8 way depending on the condition, whether it was
9 properly maintained and those things.

10 Q. What was your opinion of the R22
11 that was traded in?

12 A. As I recall, I think I told Dennis
13 that anywhere between 90 and 105,000. 105
14 would have been the high end, 85 to 90 on the
15 low end.

16 Q. And the agreed upon price trade-in
17 value was 90?

18 A. Yes.

19 Q. Did Dennis tell you that he was
20 not interested in going into any business
21 transactions but just wanted to buy a new
22 helicopter?

23 A. No. I don't recall that statement
24 at all.

25 Q. Did you tell Dennis with respect

1 the helicopter?

2 A. Ken Schoenfelter gave us a loan
3 that we used on our building as collateral
4 for, in the event, if we did not pay back. He
5 wanted money back and a discount to purchase
6 that 240RM you referred to it as, to purchase
7 that helicopter. Our wish was he repaid the
8 loan versus paying the helicopter. We would
9 have had to come up with the difference to pay
10 off Stanger.

11 Q. Stanger was the owner of the
12 helicopter?

13 A. Well, he's not a registered owner
14 of the aircraft.

15 Q. Who is?

16 A. The bank is holding the paper on
17 that helicopter, yes. He never registered as
18 far as I know.

19 Q. The bank being Security State?

20 A. No. A bank in business and I want
21 to say Dairyland. Dairyland State Bank,
22 something such as that.

23 Q. Does HFI have loans with other
24 banks besides the bank in Bemidji?

25 A. Yes.

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Page 40

1 to the R22 that the bank would remit all of
2 the funds to you for the purchase of the R44
3 on the trade-in of the R22?

4 A. No. I told, I told him that I
5 think right from the get go before he ever
6 sent -- I advised him to hold the paperwork
7 until we had concluded a transaction with the
8 buyer. And then I suggested, I filled out the
9 bill of sale and said when I tell you the
10 gentlemen is ready to conclude the
11 transaction, send it to the bank and the bank
12 will handle the transaction and send the
13 funds. And I know, because my bank told me
14 this, that Dennis was going to have his bank
15 call our bank to verify that and our bank,
16 security State Bank, I say our bank, but the
17 bank we were dealing with.

18 Q. Now the R44 which is the 240RM was
19 owned by a Richard Stanger?

20 A. Yes.

21 Q. And did you sell the helicopter to
22 a Ken Schoenfelter?

23 A. No. I did not sell the helicopter
24 to Ken Schoenfelter.

25 Q. Did Ken Schoenfelter pay you for

1 Q. Which banks?

2 A. Are you talking about aircraft
3 loans or, I mean, we have car loans, we
4 have --

5 Q. I'm not interested in small
6 loans.

7 A. Aircraft loans, we, aircraft loans
8 with it still might be under Conseco. Recently
9 I believe that was transferred to Cesena
10 Finance. I think Cesena has now taken over.

11 Q. How much are those loans?

12 A. We have two helicopters under
13 that. Total of 140, 160. I'm guessing right
14 now. Under 200,000 I believe in helicopter
15 loans with them.

16 Q. I'm just trying to see. At the
17 beginning of the deposition I asked how much
18 HFI owes and you gave the number of, I think,
19 952,000 is a number that you gave. You owe a
20 couple hundred thousand to Security?

21 A. Uh-huh.

22 Q. You owe 146,000 on these
23 helicopters. Where are the other major -- and
24 you owe money to Dennis, obviously.

25 A. And I owe some money toward my

Page 41

Page 43

1 building.

2 Q. Are those the only debts you have?

3 A. I have a tax death of about
4 80,000.

5 Q. To the IRS?

6 A. Yes.

7 Q. Is that trust fund taxes or income
8 taxes?

9 A. Income taxes.

10 Q. Personal or corporate?

11 A. Corporate.

12 Q. Well --

13 A. It might be around 60. We are
14 making payments.

15 Q. How about to the State?

16 A. State I think I owe about 13,000.

17 Q. Now as part of the purchase of a
18 new helicopter, is there training included in
19 that or is that extra funds to be paid to
20 Robinson? How does that work? I buy a new
21 helicopter. I know very little about it.
22 What happens?

23 A. We typically provide the
24 training. Factory is not responsible for
25 training. We provide the training.

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1 Q. Is that part of the sale?

2 A. Sometimes it is. Sometimes the
3 customer pays extra, depending. Similar to a
4 car deal. Depending what the customer is
5 paying for the aircraft. Markup. I guess the
6 best answer I could give you, each deal is
7 separate and stands alone. There's no set
8 practice either established by the factory or
9 by our company. Typically my sale is
10 packaged, typically offers 20 hours of
11 training with the purchase of an aircraft.
12 That's my typical sales package. Sometimes
13 it's more, sometimes it's less, depending on
14 the customer's experience or no experience.

15 Q. And this sale to Central Boiler,
16 who was included in the different terms of
17 training, if at all?

18 A. Without looking I'm going to
19 guess, probably in this case would have been
20 five hours of transition training to get
21 Dennis acquainted with the helicopter. The
22 FAA requires a minimum of five hours of
23 training in the helicopter.

24 Q. As I understand, he was going to
25 go out to Robinson with a pilot to pick it up,

1 is that correct?

2 A. Yes.

3 Q. He was actually expecting to pick
4 it up, was he not?

5 A. Yes.

6 Q. And it was in April, beginning of
7 April of this year. Tell me what happened.

8 A. I don't believe he was available
9 in April. He actually asked us to delay
10 ordering and I believe, I don't have it right
11 here. I would have to look. May even be a
12 letter to that. If I didn't write it I
13 believe our director of operations did, asking
14 Rob -- in fact, I do know that. The director
15 of operations made a request to the factory to
16 delay delivery to either the 11th or 15th of
17 May, in that time frame, because Dennis was,
18 they had some certification process going on
19 in the factory and he wasn't able to go. He
20 wanted a delay of delivery.

21 Q. He was going to want to go out.
22 When did you inform him that he couldn't pick
23 up the helicopter because it hadn't been paid
24 for?

25 A. Right around May time.

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1 Q. Tell me about --

2 A. Because we ended up sending,
3 actually we ended up sending Scott Schramm,
4 our director of operations, to pick up the
5 helicopter. We thought we had concluded a
6 transaction to get some money into the
7 business that we would have paid off the
8 aircraft. I actually sent Scott Schramm out
9 there to pick up the helicopter and the deal
10 fell through. I told Dennis, at that time
11 Dennis wasn't interested at that time going
12 out. He was interested in having it picked up
13 and delivered.

14 Q. It was in May at that time when
15 your pilot was out there and there was no
16 money to pay for it?

17 A. Correct.

18 Q. What conversations occurred
19 between you and Dennis at that time?

20 A. I don't remember. I don't
21 remember what the conversation was.

22 Q. On the helicopter we talked about
23 previously, the 240RM, who has the title and
24 where is the helicopter at the present time?

25 A. The bank that this Mr. Stanger had

Page 45

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1 worked with currently holds the paper. I do
2 know that. I verified that. They currently
3 hold the paper on the aircraft. Ken Schultz
4 out there has taken personal custody of the
5 helicopter and is holding the aircraft until
6 the funds are repaid to him.

7 Q. Do you remember a helicopter
8 that's 144GH sold to a Jim Brotten in Fargo?

9 A. Jim Brottnem.

10 Q. Brottnem?

11 A. Brottnem.

12 Q. Do you owe Mr. Brottnem on that?

13 A. I currently owe him nothing. He
14 owes me \$7,600 which I'm trying to collect.

15 Q. What happened in that transaction
16 briefly?

17 A. He initially bought the aircraft.
18 He was in the process of buying the aircraft
19 and changed his mind and decided not to.
20 Didn't want it. He was going to buy it. Set
21 it up on the last -- he had an R22 I believe
22 he was going to try to sell on his own and
23 that didn't go through and they didn't buy it
24 and he was paid back.

25 Q. There was a transaction that's

1 Q. What's the situation there?

2 A. We owe some money on his
3 helicopter. He has his helicopter but we owe
4 him money for it.

5 Q. Approximately how much?

6 A. About 250, 260,000.

7 Q. So he would have paid Robinson?

8 A. He paid for the helicopter.

9 Q. It says twice. Once to you and
10 once to Robinson. Anybody else?

11 A. No.

12 Q. Anybody else you purchased
13 helicopters for that you owe money to?

14 A. No.

15 Q. Just Dennis and Bult?

16 A. Yes.

17 Q. The building that HFI owns, it
18 owns the building and the land that sits under
19 it?

20 A. The land is leased property,
21 Airport Commission.

22 Q. How long is the lease?

23 A. They're renewable leases. They're
24 now renewing it 15 and 10 years.

25 Q. Is there going to be any problem

Page 46

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1 referred to in some of the correspondence with
2 a Doctor Rashidian.

3 A. Doctor Rashidian.

4 Q. What happened there?

5 A. He purchased a helicopter, or
6 ordered, excuse me, ordered a helicopter from
7 us. Again similar scenario. Paid in cash.
8 We with his permission invested in another
9 aircraft. Sold that aircraft and we were
10 late. We were two or three weeks late getting
11 this aircraft delivered and he was very upset
12 about it.

13 Q. Does he have his helicopter?

14 A. Oh, yes.

15 Q. Is Dennis the only person that
16 ordered a helicopter and paid for it that does
17 not have it?

18 A. He is the only one that does not
19 have the helicopter that he purchased,
20 correct?

21 Q. Are there other people to whom you
22 sold helicopters that you owe money to?

23 A. Yes.

24 Q. Who would they be?

25 A. Jim Bult, B-u-l-t.

1 in renewing it?

2 A. No. They have had quite a few
3 improvements. I haven't seen the paperwork.

4 Q. What's the value of the building,
5 forgetting the depreciation?

6 A. The building was appraised by the
7 bank end of '99 or early 2000 and I think the
8 appraisal at that time was 450,000 or
9 455,000.

10 Q. You say bank, which bank are you
11 referring to?

12 A. Citizens Independent Bank. The
13 bank we do our general business with.

14 Q. Is there any individual or entity
15 that owes HFI a substantial amount of money?

16 A. Yes.

17 Q. Who is that?

18 A. Metro Networks. It's a national
19 TV company. They owe us. We are claiming
20 they owe us about 250,000.

21 Q. What's their claim?

22 A. They owe us nothing.

23 Q. And where is that case venued?

24 A. In Houston, Texas.

25 Q. Would you give Mr. Gabriel copies

Page 49

Page 51

1 of the pleadings in that case?

2 A. Yes.

3 Q. Any other substantial accounts
4 receivable?

5 A. Maybe we have miscellaneous small
6 amounts. You want me to try to recall what
7 they are?

8 Q. Anything over \$10,000?

9 A. Xcel Power Company around 16,000
10 and the rest of them are small amounts.
11 Different TV companies on contracts.

12 Q. Are those collectible?

13 A. Yes. Unless WCCO is out of
14 business.

15 Q. Is the company losing money every
16 month?

17 A. Yes. First quarter I think.
18 Since second quarter we, as I recall, we were,
19 I think we were on par. July we're showing a
20 profit.

21 Q. Aside from the dispute as to
22 whether or not you were personally responsible
23 for the debt, do you agree with the amount
24 asked for in our Complaint in terms of HFI?

25 A. The numbers that we talked about

1 Q. Okay. So we have 90,000, 25,000,
2 and 181. \$296,414?

3 A. Yes.

4 Q. You agree that HFI --

5 A. For the helicopter.

6 Q. You agree that HFI has no defense
7 to that?

8 A. Right.

9 Q. Has the bank, the Bemidji bank
10 picked up the property that they claim at this
11 point?

12 A. No.

13 Q. Is there a time limit they've
14 given you as to when they're going to?

15 MR. KLINGER: Have they spoken to
16 you, Rich?

17 A. I can answer that?

18 Q. Sure.

19 A. They want it done by the end of
20 this week.

21 Q. It's your opinion, at this point
22 at least, that the asset value of the company
23 is somewhat in excess of the debts owed by the
24 company, is that your opinion?

25 Q. Yes. Liquidation value.

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1 early on, I agree Helicopter Flight does owe
2 that money, yes.

3 Q. Let's make sure we have those
4 numbers. Since they would not be able to get
5 the helicopter from Robinson, they lost 25,000
6 there.

7 A. I don't know that for a fact. I
8 think the helicopter is still there.

9 Q. You agree this would have to be
10 paid?

11 A. Not necessarily.

12 Q. What do you mean by not
13 necessarily?

14 A. It was done in the last case.

15 Q. I'm not sure I understand.

16 A. With Mr. Bult. I just purchased
17 that.

18 Q. A discount?

19 A. Yes.

20 Q. In terms of the cash given to HFI,
21 why don't you tell me how much cash you agree
22 was paid both in cash and lease, trade?

23 A. I agree we would owe Dennis
24 Brazier trade-in value of 90,000, 25,000 that
25 was used as a deposit and 181,414.

1 A. I don't know. I have to look
2 fairly close.

3 Q. You said there was 952,000 of
4 debt.

5 A. Uh-huh.

6 Q. Then you have got four to 500,000
7 in a building, four helicopters and all the
8 equipment?

9 A. Contracts have a value.

10 Q. But those are sign off.

11 A. I don't know.

12 Q. Have you, you can interrupt me if
13 you want, have you discussed selling the
14 business to anybody?

15 A. Yes. I'm in the process of
16 working out a sale.

17 Q. Okay. And when is that sale
18 supposed to take place.

19 (A discussion was held off the
20 record.)

21 Q. Are you still working with
22 Robinson and selling helicopters?

23 A. No, not directly.

24 Q. When was the last helicopter you
25 sold that was purchased from Robinson not

Page 53

Page 55

1 including this one?
 2 A. May I think.
 3 Q. Who was the purchaser of that?
 4 A. Gentlemen in Florida. Actually
 5 going through another dealer.
 6 Q. Because you were unable to sell it
 7 through your dealership, you worked through
 8 another dealer?
 9 A. Robinson -- I'm trying to
 10 remember. Robinson was continuing taking
 11 orders through March from us.
 12 Q. There is some correspondence in
 13 December, I think your losing your agency.
 14 But you still were able to place this order?
 15 A. Yes. And others.
 16 Q. How many helicopters did you sell
 17 in 2002 for Robinson Helicopters?
 18 A. Five I think.
 19 Q. How many were through your
 20 dealership?
 21 A. Well, five directly out of my,
 22 four or five directly out of my dealership and
 23 one through another dealer.
 24 MR. GABRIEL: This was in 2002?
 25 THE WITNESS: 2002.

1 don't carry any aircraft loans through them.
 2 Q. Any questions I should have asked
 3 you?
 4 A. A few for you.
 5 MR. KLINGER: That's all I have.
 6 MR. GABRIEL: Counsel, I have no
 7 questions. I note during the course of the
 8 deposition you made reference to us supplying
 9 any letters from Robinson regarding the
 10 dealership and any other correspondence from
 11 Robinson pertaining to the dealership and a
 12 copy of the pleadings of Metro Networks and we
 13 will supply those.
 14 Mr. Preece, you have the right to
 15 read your deposition and I would advise you to
 16 not waive that right and to read your
 17 deposition and sign it.
 18 THE WITNESS: Okay.
 19 (This deposition was concluded at
 20 3:00 p.m.)
 21
 22
 23
 24
 25

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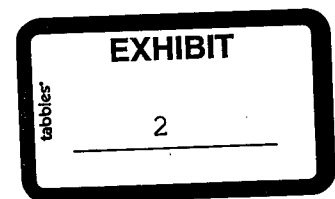
Page 56

1 Q. Just to get the exhibits in,
 2 Exhibit No. 7 is a copy of a Robinson invoice
 3 relating to this helicopter. What is this
 4 document?
 5 A. I didn't know you asked a
 6 question. I thought it was a statement. This
 7 is an aircraft invoice order.
 8 Q. Exhibit 8?
 9 A. A letter dated February 7th to
 10 Dennis Brazier signed by me.
 11 Q. And Exhibit 9 is part of some
 12 documents we already looked at.
 13 A. Aircraft bill of sale.
 14 Q. Exhibit 10?
 15 A. A letter dated February 11th to
 16 Dennis Brazier signed by me.
 17 Q. Exhibit 5 we already discussed. 1
 18 is your Answer. 4, we talked about that.
 19 A. Rashidian.
 20 Q. Exhibit 6, we talked about the
 21 Citizens Independent Bank. We have discussed
 22 they're your primary financier down in the
 23 Cities, or your home bank in the Cities.
 24 A. Citizens Independent Bank is my
 25 general business account for paying bills. We

1 NOTARY REPORTER'S CERTIFICATE
 2 STATE OF NORTH DAKOTA
 3 COUNTY OF CASS
 4 I, Douglas T. Ketcham, a Notary Public
 5 within and for the County of Cass and State of
 6 North Dakota do hereby certify: That prior to
 7 being examined the afore-named witness was by
 8 me sworn to testify the truth, the whole
 9 truth, and nothing but the truth.
 10 That said deposition, consisting of
 11 fifty-five (55) pages of typewritten
 12 materials, was taken down by me in Stenotype
 13 at the time and place therein named, and was
 14 thereafter reduced to typewriting under my
 15 direction.
 16 I further certify that I am neither
 17 related to any of the parties or counsel nor
 18 interested in this matter directly or
 19 indirectly.
 20 WITNESS my hand and seal this 11th day of
 21 September, 2002.
 22 Douglas T. Ketcham
 23 Notary Public
 24 Fargo, North Dakota
 25 My commission expires June 27, 2008.

Copy of deposition of J. Bruce Preece taken on August 5, 2004.

(To be submitted prior to argument after transcribed.)



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

AFFIDAVIT OF DENNIS BRAZIER

James Bruce Preece,

Defendant.

STATE OF MINNESOTA)

COUNTY OF _____)

) ss.

EXHIBIT

tabbles

3

Dennis Brazier, being duly sworn, states and deposes:

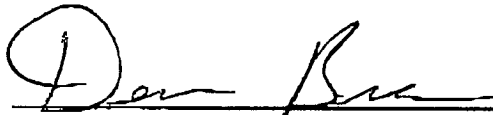
1. That he is the principal officer of the plaintiff/moving party, Central Boiler, Inc.
2. That he is the representative of Central Boiler who dealt with the defendant, James Bruce Preece.
3. That the transaction involved in this case involves a R44 helicopter manufactured by Robinson Helicopters of California.
4. I previously had purchased, some eight to ten years before, a smaller R22 helicopter from Helicopter Flight, Inc.
5. All my contacts with Helicopter Flight, Inc. ("HFI") were with the defendant, James Bruce Preece ("Preece") regarding the purchase of the R44 and the trade-in of the R22..

6. The purchase initially seemed to be straight forward. We wanted to purchase a new R44, which has a purchase price somewhat in excess of \$300,000. I considered the options, and when I was ready to consider purchase, we put down the \$25,000 required by Robinson, which apparently was transferred from HFI to Robinson.
7. Preece then asked me to consider a number of options, all of which I rejected. He asked me to be in business with him, to give him personal credits, and I specifically told him that I did not want to be in business with him.
8. Mr. Preece gave me the impression through his words and deeds that "business had never been better at HFI." He told me he had just hired an extra mechanic, and that HFI was expanding to an additional hangar at its location in the Twin Cities.
9. The arrangement ultimately was made where I was going to trade in our R22 and be given \$90,000 on the remaining balance of the purchase price (approximately \$325,000) of the new R44.
10. Ultimately, I discovered that the \$90,000 which was received from the sale of our previous R22 was offset \$50,000 by HFI's bank, and the other \$40,000 used by the company.
11. As Mr. Preece has admitted in his deposition, the \$296,000 which we are claiming in our complaint, which was paid by us to HFI, was never used for the purchase of the R44 helicopter for which it was intended, but was rather offset (\$50,00 by the bank) or apparently placed into the coffers of HFI.
12. I have subsequently discovered through the depositions taken of Mr. Preece and information provided by accountant Michelle Benton, that HFI was undercapitalized, had lost money during the several years prior to this unfortunate incident, and that HFI had provided funds to an affiliate totally owned by Mr. Preece.

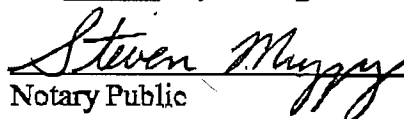
13. I only dealt with Mr. Preece, and considered him to be the person who was in control of the corporation, and relied upon his representations of solvency, and that he would follow the directions and remit the funds to Robinson as promised for the helicopter.
14. My company was damaged, and prior to the bankruptcy, a judgment was entered against HFT in the amount of \$296,556 on August 28, 2002, pursuant to the judgment attached as Exhibit A to my affidavit.

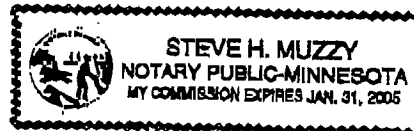
Further your affiant sayeth not.

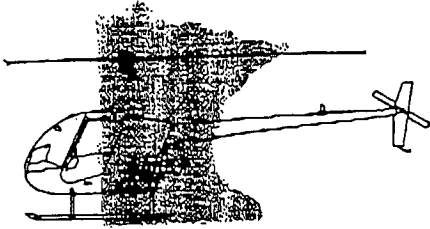
Dated this 25 day of August, 2004.


Dennis Brazier

Subscribed and sworn to before me
this 25th day of August, 2004.


Notary Public





Helicopter Flight, Inc.

Crystal Airport

5930 Lakeland Ave. No., Minneapolis, MN 55428
(763) 537-4137 • FAX (763) 537-4217

February 11, 2002

Mr. Dennis Brazier
Central Boiler
20502 160th Street
Greenbush, Minnesota

Dear Dennis,

This letter is in regards to our conversation last night and the agreement regarding early payment of your R44 order. You offered to pay for your aircraft in full today in exchange for an additional \$7,000.00 discount on the purchase price of your helicopter. You understand that HFI will be investing these funds in the purchase and sale of another helicopter that will produce a profit for HFI and the aforementioned discount on your order.

I appreciate your interest and the early payment. The total payment with discount is:

\$303,414.00 (with original discount agreement)
90,000.00 (R22 trade-in)
25,000.00 (deposit received 2/8/02)
7,000.00 (early payment discount)

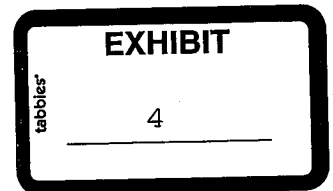
\$181,414.00 final payment

I have attached wiring instructions. I would appreciate it if the funds could be wired today. HFI accountant, Bev Larson, will mail you a invoice/receipt showing that the aircraft is paid in full.

I will call you next week in regards to picking up your aircraft. Thank you!

Best regards,

J. Bruce Preece



EXHIBIT

DEM #9
8-13-02

AC Form 8050-2 (9/92) (NSN 0052-00-629-0003) Supersedes Previous Edition

UNITED STATES OF AMERICA
U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION
AIRCRAFT BILL OF SALE

FORM APPROVED
OMB NO. 2120-0042

FOR AND IN CONSIDERATION OF \$90,000.00 THE
UNDERSIGNED OWNER(S) OF THE FULL LEGAL
AND BENEFICIAL TITLE OF THE AIRCRAFT DES-
CRIBED AS FOLLOWS:

UNITED STATES
REGISTRATION NUMBER **N8083Z**
AIRCRAFT MANUFACTURER & MODEL
Robinson R22 Beta
AIRCRAFT SERIAL No.
2403

DOES THIS **8th** DAY OF **April** **2002**
HEREBY SELL, GRANT, TRANSFER AND
DELIVER ALL RIGHTS, TITLE, AND INTERESTS
IN AND TO SUCH AIRCRAFT UNTO:

Do Not Write In This Block
FOR FAA USE ONLY

PURCHASER

NAME AND ADDRESS
(IF INDIVIDUAL(S), GIVE LAST NAME, FIRST NAME, AND MIDDLE INITIAL)

Helicopter Flight, Inc.
5950 Colcland Ave. N.
Crystal, MN. 55428

DEALER CERTIFICATE NUMBER

AND TO EXECUTORS, ADMINISTRATORS, AND ASSIGNS TO HAVE AND TO HOLD
SINGULARLY THE SAID AIRCRAFT FOREVER, AND WARRANTS THE TITLE THEREOF.

IN TESTIMONY WHEREOF

HAVE SET

HAND AND SEAL THIS

DAY OF

19

SELLER

| NAME (S) OF SELLER (TYPED OR PRINTED) | SIGNATURE (S) (IN INK) (IF EXECUTED FOR CO-OWNERSHIP, ALL MUST SIGN.) | TITLE (TYPED OR PRINTED) |
|------------------------------------------------|--------------------------------------------------------------------------------|-----------------------------|
| Dennis Brazier Central Boiler | <i>Dennis Brazier</i> | CEO |
| | | |
| | | |
| | | |

ACKNOWLEDGMENT (NOT REQUIRED FOR PURPOSES OF FAA RECORDING, HOWEVER, MAY BE REQUIRED
BY LOCAL LAW FOR VALIDITY OF THE INSTRUMENT)

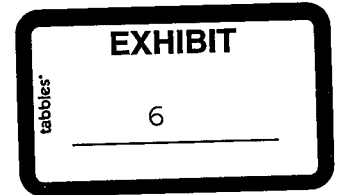
ORIGINAL: TO FAA

AC Form 8050-2 (9/92) (NSN 0052-00-629-0003) Supersedes Previous Edition

EXHIBIT

5

MINUTES OF ANNUAL MEETING
OF SOLE SHAREHOLDER AND MEMBER OF
THE BOARD OF DIRECTORS OF
HELICOPTER FLIGHT, INC.



The annual meeting of the sole shareholder and member of the Board of Directors of Helicopter Flight, Inc. was held on July 30, 2002, at the corporate office, pursuant to written waiver of notice of said meeting appended to these Minutes. It was understood and agreed that each and every one of the resolutions hereinafter set forth were adopted as of July 30, 2002, notwithstanding that any approval or ratification of such resolutions may be done in writing executed by such shareholders and members of the Board of Directors subsequent to said date.

All of the Board of Directors were present at said meeting and the holders of more than 50% of the outstanding shares of the corporation entitled to vote at said meeting were also present. J. Bruce Preece acted as chairman and secretary of the meeting.

The following persons were nominated for members of the Board of Directors of the corporation to hold office until the next annual meeting of the shareholders and until their respective successors are chosen and qualified:

J. Bruce Preece.

Ballots having been duly had and all shareholders present having voted, the chairman announced that the aforesaid persons had been elected directors to hold office until the next annual meeting of the shareholders and until their respective successors are

chosen and qualified.

The chairman reported that the corporation was experiencing financial difficulties and exploring a long term lease agreement for the corporate assets. The corporation was also attempting to secure a loan to meet its various obligations.

Thereupon, the chairman reviewed the activities of the Board of Directors since the last annual meeting of the shareholders and reported as to the actions of the corporation and the Board of Directors since the last meeting.

Upon motion duly made, seconded and carried, it was unanimously:

RESOLVED, that all proceedings of the Board of Directors since the last annual meeting of the shareholders as set forth in the resolutions recorded in the minute book of the corporation, and all acts pursuant thereto taken by members of the Board of Directors or by officers of the corporation, are hereby ratified and approved in all respects.

The chairman announced that a quorum of the Board of Directors was present and moved to proceed with the election of officers for the ensuing year. The motion was duly seconded and carried. The name of J. Bruce Preece was then placed in nomination as candidate for the offices of president, secretary and treasurer. There being no other nominations and the ballots having been duly had and all the directors present having voted, the chairman thereupon declared J. Bruce Preece the duly elected president, secretary and treasurer for the ensuing year.

The chairman reported because of cash flow needs for the corporation, the corporation was unable to pay the president a

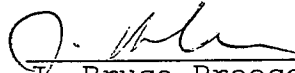
salary.

The chairman then reported as to the actions of the corporation and the officers of the corporation since the last annual meeting. Upon motion duly made, seconded and carried, it was unanimously:

RESOLVED, that all proceedings and actions of the officers of the corporation since the last meeting of the Board of Directors be and the same are hereby ratified and approved in all respects.

There being no further business, a motion duly made, seconded and carried, the meeting was thereupon adjourned.

Each and every of the foregoing resolutions is hereby adopted, confirmed and ratified by the undersigned, who also waive notice of the holding of the meeting of the shareholders and members of the Board of Directors of said corporation and consent to the adoption of each and every of such resolution as of July 30, 2002.


J. Bruce Preece, Secretary,
Sole Shareholder and Member of
The Board of Directors

Form **1120S****U.S. Income Tax Return for an S Corporation**

OMB No. 1545-0130

▶ Do not file this form unless the corporation has timely filed
Form 2553 to elect to be an S corporation.

▶ See separate instructions.

2000Department of the Treasury
Internal Revenue ServiceA Effective date of election
as an S corporation

3/28/1989

B Business code (10,
(see pages 29-31))

481000

Use
IRS
label.
Other-
wise,
print
or type.HELICOPTER FLIGHT, INC.
5930 LAKELAND AVE NORTH
CRYSTAL, MN 55428**EXHIBIT***Page #12*

C Employer identification number

41-1636690

D Date incorporated

3/28/1989

E Total assets (see page 11)

\$ 966,542

F Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Change in address (4) ☐ Amended return

G Enter number of shareholders in the corporation at end of the tax year

1

Caution: Include only trade or business income and expenses on lines 1a through 21. See page 11 of the instructions for more information.

| INCOME | | DEDUCTIONS | | TAX AND PAYMENTS | |
|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------------------------------------------------------|------------------|---|
| 1 a | Gross receipts or sales | 5,735,884 | b Less returns & allowances | | |
| 2 | Cost of goods sold (Schedule A, line 8) | | | | |
| 3 | Gross profit. Subtract line 2 from line 1c | | | | |
| 4 | Net gain (loss) from Form 4797, Part II, line 18 (attach Form 4797) | | | | |
| 5 | Other income (loss) (attach schedule) | | | | |
| 6 | Total income (loss). Combine lines 3 through 5 | | | | |
| 7 | Compensation of officers | | | | |
| 8 | Salaries and wages (less employment credits) | | | | |
| 9 | Repairs and maintenance | | | | |
| 10 | Bad debts | | | | |
| 11 | Rents | | | | |
| 12 | Taxes and licenses | | | | |
| 13 | Interest | | | | |
| 14 a | Depreciation (if required, attach Form 4562) | 91,402 | 14b Depreciation claimed on Schedule A and elsewhere on return | | |
| | | | c Subtract line 14b from line 14a | | |
| 15 | Depletion (Do not deduct oil and gas depletion.) | | | | |
| 16 | Advertising | | | | |
| 17 | Pension, profit-sharing, etc., plans | | | | |
| 18 | Employee benefit programs | | | | |
| 19 | Other deductions (attach schedule) | SEE STATEMENT 1 | | | |
| 20 | Total deductions. Add the amounts shown in the far right column for lines 7 through 19 | | | | |
| 21 | Ordinary income (loss) from trade or business activities. Subtract line 20 from line 6 | | | | |
| 22 a | Excess net passive income tax (att. schedule) | | | | |
| 22 b | Tax from Schedule D (Form 1120S) | | | | |
| | c Add lines 22a & 22b (see page 15 of the instrs for add'l taxes) | | | | |
| 23 a | Payments: a 2000 estimated tax payments & amt applied from 1999 return | | | | |
| 23 b | Tax deposited with Form 7004 | | | | |
| 23 c | Credit for Federal tax paid on fuels (attach Form 4136) | | | | |
| | d Add lines 23a through 23c | | | | |
| 24 | Estimated tax penalty. Check if Form 2220 is attached | | | | |
| 25 | Tax due. If the total of lines 22c and 24 is larger than line 23d, enter amount owed. See page 4 of the instructions for depository method of payment | | | | 0 |
| 26 | Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid | | | | |
| 27 | Enter amount of line 26 you want: Credited to 2001 estimated tax | | Refunded | | |

EXHIBIT

7

Sign
Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

Paid

Preparer's
OnlyPreparer's
signature

Date

Check if self-
employed

Preparer's SSN or PTIN

3/06/02

474-86-0124

Firm's name (or
yours, if self-employed)
address, and ZIP codeRE, MANDT & FOSS PLLP, CPA'S
PO BOX 48
NISSWA, MN 56468

EIN 41-1948412

Phone No.

(218) 963-7974

For Paperwork Reduction Act Notice, see the separate instructions.

Form 1120S (2000)

Form 1120S U.S. Income Tax Return for an S Corporation 2001

OMB No. 1545-0130

IRS use only — Do not write or staple in this space.

▶ Do not file this form unless the corporation has timely filed Form 2553 to elect to be an S corporation.
▶ See separate instructions.

For calendar year 2001, or tax year beginning , 2001, and ending , 20

| | | |
|---------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------|--------------------------------------------------|
| A Effective Date of Election as an S Corporation 3/28/1989 | Use IRS label. Otherwise, print or type. HELICOPTER FLIGHT, INC. 5930 LAKELAND AVE NORTH CRYSTAL, MN 55428 | C Employer Identification Number 41-1636690 |
| | | D Date Incorporated 3/28/1989 |
| B Business Code No. (see instructions) 481000 | | E Total Assets (see instructions) \$ 828,439. |

F Check applicable boxes: (1) ☐ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change (5) ☐ Amended return

G Enter number of shareholders in the corporation at end of the tax year. ▶ 1

Caution: Include **only** trade or business income and expenses on lines 1a through 21. See the instructions for more information.

| | | | | | | | | |
|--------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------|-------------------------------------|---------|---------|---------|------------|--|
| INCOME | 1 a Gross receipts or sales | 2,429,925. | b Less returns and allowances | 16,570. | c Bal ▶ | 1c | 2,413,355. | |
| | 2 Cost of goods sold (Schedule A, line 8) | | | | | 2 | 1,807,269. | |
| | 3 Gross profit. Subtract line 2 from line 1c | | | | | 3 | 606,086. | |
| | 4 Net gain (loss) from Form 4797, Part II, line 18 (attach Form 4797) | | | | | 4 | | |
| | 5 Other income (loss) (attach schedule) | | | | | 5 | | |
| | 6 Total income (loss). Combine lines 3 through 5. ▶ | | | | | 6 | 606,086. | |
| DEDUCTIONS | 7 Compensation of officers | | | | | 7 | | |
| | 8 Salaries and wages (less employment credits) | | | | | 8 | 331,776. | |
| | 9 Repairs and maintenance | | | | | 9 | 32,641. | |
| | 10 Bad debts | | | | | 10 | 426. | |
| | 11 Rents | | | | | 11 | 58,752. | |
| | 12 Taxes and licenses | | | | | 12 | 41,710. | |
| | 13 Interest | | | | | 13 | 60,141. | |
| | 14a Depreciation (if required, attach Form 4562) | 14a | 68,345. | | | | | |
| | b Depreciation claimed on Schedule A and elsewhere on return. | 14b | | | | | | |
| | c Subtract line 14b from line 14a | | | | 14c | 68,345. | | |
| SEE INSTRUCTIONS | 15 Depletion (Do not deduct oil and gas depletion.) | | | | | 15 | | |
| | 16 Advertising | | | | | 16 | 36,101. | |
| | 17 Pension, profit-sharing, etc, plans | | | | | 17 | | |
| | 18 Employee benefit programs | | | | | 18 | | |
| | 19 Other deductions (attach schedule) | | SEE STATEMENT. 1 | | | 19 | 275,234. | |
| | 20 Total deductions. Add the amounts shown in the far right column for lines 7 through 19. ▶ | | | | | 20 | 905,126. | |
| | 21 Ordinary income (loss) from trade or business activities. Subtract line 20 from line 6. | | | | | 21 | -299,040. | |
| | TAX AND PAYMENTS | 22 Tax: a Excess net passive income tax (attach schedule) | 22a | | | | 22 | |
| | | b Tax from Schedule D (Form 1120S) | 22b | | | | | |
| | | c Add lines 22a and 22b (see instructions for additional taxes) | | | | | | |
| 23 Payments: a 2001 estimated tax payments and amount applied from 2000 return | | 23a | | | | 23 | | |
| b Tax deposited with Form 7004 | | 23b | | | | | | |
| c Credit for federal tax paid on fuels (attach Form 4136) | | 23c | | | | | | |
| d Add lines 23a through 23c | | | | | | | | |
| 24 Estimated tax penalty. Check if Form 2220 is attached. ▶ <input type="checkbox"/> | | | | | 24 | | | |
| 25 Tax due. If the total of lines 22c & 24 is larger than line 23d, enter amount owed. See instrs for depository method of payment. ▶ | | | | | 25 | 0. | | |
| 26 Overpayment. If line 23d is larger than the total of lines 22c and 24, enter amount overpaid. ▶ | | | | | 26 | | | |
| 27 Enter amount of line 26 you want: Credited to 2002 estimated tax .. ▶ | | | Refunded | | 27 | | | |

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of Officer

Date

Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer's Use Only

Preparer's Signature

Date

6/27/02

Check if self-employed

Preparer's SSN or PTIN

474-86-0124

Firm's Name (or yours if self-employed), Address, and ZIP Code

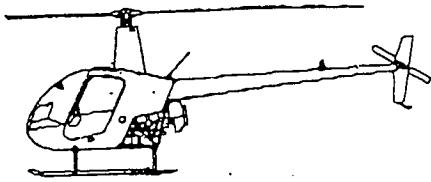
RE, MANDT & FOSS PLLP, CPA'S

PO BOX 48

NISSWA, MN 56468

EIN 41-1948412

Phone No. (218) 963-7974



Helicopter Flight, Inc.

Crystal Airport

5930 Lakeland Ave. No., Minneapolis, MN 55428
(763) 537-4137 • FAX (763) 537-4217

February 7, 2002

Mr. Dennis Brazier
Central Boiler
20502 160th Street
Greenbush, MN 56726

Dear Dennis,

This letter shall serve as our amended agreement regarding the order of one 2002 Robinson R44 Raven Helicopter from Helicopter Flight, Inc. The aircraft will be ordered and equipped with the options described in my letter of January 26, 2002 and the following changes or additions. The AM/FM radio is deleted and the AM/FM/CD Receiver Avionics AICD III is added. This changes the equipment retail purchase price from \$1,400.00 to \$2,080.00. We have also added the specific color request of Slate Grey Metallic #44433 for a base and Sherwood Green Metallic H7925 for the trim. We are also requesting the old style R44 Astro paint scheme. The total retail value of this aircraft is \$328,100.00.

As previously agreed, I am providing you a discount in the amount of 6% / \$19,686.00 and an additional \$5,000.00 based on the agreement that J. Bruce Preece receives a personal credit with Central Boiler in the amount of \$2,500.00 to be applied to a purchase made at Central Boiler within twelve calendar months. As part of the special discount that is provided by HFI, you agree to pay for all expenses including pilot time, travel costs, fuel/oil, maintenance and insurance for the delivery of your aircraft from California to Minnesota (est. \$3,000.00). Your final price is \$303,414.00. You will receive a trade-in credit of \$90,000.00 with a balance due of \$213,414.00 minus deposit. The balance must be paid seven days before delivery (est 4-15-02).

HFI agrees to take your 1994 Robinson R22 in as trade for the price of \$90,000.00. The aircraft is to be delivered to HFI on or before February 21, 2002 in good working order, no damage history, with all Service Bulletins and Airworthiness Directives met.

Thank you for your order.

Best regards,

J. Bruce Preece, President

EXHIBIT

tabbles

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EXHIBIT

Dep #2
8-13-02

STATE OF MINNESOTA

CaseType: Contract
DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Security Bank, USA,

Plaintiff/Claimant,

Case No: 02-7914

vs.

ORDER FOR SEIZURE

Helicopter Flight, Inc. and Leonard Busch,

Defendants/Respondents.

The above-captioned matter was heard by the Court on June 12, 2002, upon Motion by Plaintiff/Claimant for an Order granting Plaintiff/Claimant immediate delivery and possession of the personal property described in the attached Collateral List.

James L. Wiant of Rinke-Noonan appeared in support of said Motion; other appearances, if any, were noted on the record.

After hearing the evidence and arguments and being fully advised in the premises, IT IS ORDERED that, upon the filing of a bond, cashier's check or certified check in the amount of \$ 200,000. by Plaintiff/Claimant, the Sheriff of Hennepin County, or the Sheriff of any County of this State wherein the aforementioned personal property may be found, replevy the property without delay by seizing possession of the personal property and causing the same to be delivered to Plaintiff/Claimant. The Plaintiff/Claimant shall be and hereby is immediately authorized to sell or otherwise dispose of the property pending a final hearing on the merits of the Complaint filed herein.

EXHIBIT

tabbies

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IT IS FURTHER ORDERED that if the personal property or any of it, be sealed or enclosed in Defendant's/Respondent's property located at the following addresses:

Helicopter Flight, Inc.
5930 Lakeland Avenue North
Minneapolis, MN 55428

and a public demand made by the Sheriff for its delivery refused, the Sheriff shall cause the residence/business to be broken open by force and shall take the personal property therefrom.

IT IS FURTHER ORDERED that if the aforementioned personal property is no longer located within or about Defendants'/Respondents' residence/business, Defendants/Respondents shall disclose to the Sheriff the location of the personal property. Should Defendants/Respondents fail to make full disclosure to the Sheriff as to the location of the personal property, then, in such event, Defendants/Respondents are hereby ordered and commanded to appear in person before this Court on July 10, 2002, at 8:30 o'clock A.m. to Show Cause why an Order should not be entered finding Defendants/Respondents in contempt of this Court for failure to disclose the location of the personal property subject to this Order.

FAILURE TO APPEAR PERSONALLY BEFORE THE COURT AS ORDERED AND
COMMANDED HEREIN MAY BE GROUND FOR HOLDING YOU IN CONTEMPT OF
COURT AND A BENCH WARRANT MAY BE ISSUED TO COMPEL YOUR
APPEARANCE.

Dated: June 12, 2002

Debra F. Lively
Judge of District Court

STATE OF MINNESOTA

CaseType: Contract
DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Security Bank, USA,

Plaintiff,

Case No:

vs.

COLLATERAL LIST

Helicopter Flight, Inc. and Leonard Busch,

Defendants.

| <u>DESCRIPTION OF COLLATERAL</u> | <u>ESTIMATED VALUE</u> |
|----------------------------------------------------------------------------------|------------------------|
| All inventory, accounts, contract rights | Unknown |
| All equipment | Unknown |
| All general intangibles | Unknown |
| Robinson R22 Beta Helicopter/IFR Trainer, Serial #2161, FAA Registration #N2334N | \$142,000.00 |
| 1989 Robinson R22 Beta Helicopter, Serial #1151, FAA Registration #8045Z | \$128,900.00 |
| 89 Robinson R22 2000 Hour Overhaul Kit | \$ 76,000.00 |
| Two Piper Navaho Engines, Serial #O/H TIO 540 F2BD and Serial #O/H LT10 540 FTBD | \$ 62,000.00 |
| Robinson R22 Beta Helicopter, Serial #1390, FAA Registration #N4002K | \$118,000.00 |
| TOTAL | \$526,900.00 |

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Bankruptcy No. 03-44978

Chapter 7

Debtor.

Central Boiler, Inc.,

Adversary No. 03-4285

Plaintiff,

vs.

AFFIDAVIT OF MICHELLE BENTON

James Bruce Preece,

Defendant.

STATE OF MINNESOTA)

COUNTY OF Pennington, MN) ss.

Michelle Benton, being duly sworn, states and deposes as follows:

1. That she is a certified public accountant.
2. That at the request of Edward F. Klinger, attorney for the plaintiff in the above-entitled matter, she has reviewed books and documents relating to Helicopter Flight, Inc.
3. That attached to this affidavit are copies of correspondence and previous affidavit in this matter.
4. That she has learned through Edward F. Klinger that no further information has been provided.
5. That it is her belief that, based upon the tax returns and other documentation reviewed, corporate niceties were not followed by the defendant.

EXHIBIT

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tabbles

6. That the corporation at all times relevant to the instant case was undercapitalized.
7. That based upon admissions from the defendant, funds given by the plaintiff to the defendant were diverted for other purposes.
8. That based upon the transactions described in my correspondence and affidavits, the corporation was used as a shell and that the defendant, Bruce Preece, was the alter ego of the corporation.
9. Further your affiant sayeth not.

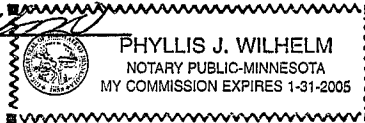
Dated this 23rd day of August, 2004.

Michelle Benton

Michelle Benton

Subscribed and sworn to before me
this 23rd day of August, 2004.

Phyllis J. Wilhelm
Notary Public



IN DISTRICT COURT

NINTH JUDICIAL DISTRICT

Central Boiler, Inc.,

Civil No. C1-02-000369

Plaintiff,

AFFIDAVIT OF MICHELLE BENTON

VS.

Helicopter Flight, Inc. and J. Bruce Preece,

Defendants.

STATE OF MINNESOTA

COUNTY OF Pennington) : ss.

: SS.

Michelle Benton, being duly sworn, states and deposes:

1. That she is a Certified Public Accountant.
2. That attached as Exhibit A to this affidavit is correspondence dated June 2, 2003 to the attorney for Central Boiler, Edward F. Klinger.
3. That this correspondence is based upon my professional experience, as well as generally accepted accounting principles.
4. That in my professional opinion, inadequate information has been provided by defendant J. Bruce Preece as had been requested in interrogatories as well as additional requests for information.
5. That in my professional opinion, corporate niceties and standards were violated by Mr. Preece, and based upon information provided to me by Edward F. Klinger, I believe that Mr. Preece was the alter ego of the corporation.

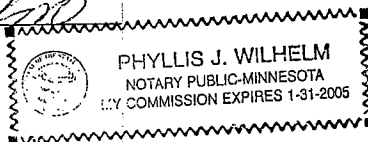
Further your affiant sayeth not.

Dated this 6th day of June, 2003.

Michelle Benton, CPA
Michelle Benton

Subscribed and sworn to before me
this 6th day of June, 2003.

Phyllis J. Wilhelm
Notary Public



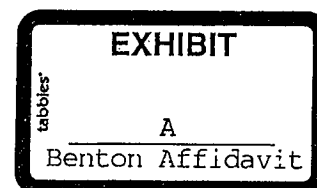
KAYS, BENTON, SAFRANSKI & Co. LLP*Certified Public Accountants*

Thomas P. Kays, CPA
Michelle M. Benton, CPA
Raymond B. Safranski, CPA

116 West Third Street
P.O. Box 637
Thief River Falls, MN 56701-0637
(218) 681-4287
Fax: (218) 681-4313
Email: kbscpa@mncable.net

June 2, 2003

Gunhus, Grinnell, Klinger, Swenson & Guy, Ltd.
Attn: Mr. Edward F. Klinger
215 30th Street North
P.O. Box 1077
Moorhead, MN 56561-1077



Dear Mr. Klinger:

I have reviewed the additional information received from Mr. Preece in response to the interrogatories for Civil Case No. C1-02-00369 Central Boiler, Inc. vs. Helicopter Flight, Inc. (HFI) and J. Bruce Preece. After reviewing this information, I noted the following:

1. Mr. Preece provided copies of the Form W-2's issued for the year 2001 in response to Interrogatory No. 15. The Form W-2's show that Mr. Preece took a salary of \$10,000 from HFI in the year 2001. This agrees with the amount Mr. Preece stated in his deposition taken August 13, 2002. Mr. Preece has not provided the detail for salaries and wages for the year 2000 as requested in Interrogatory No. 1 so we still have no idea of the amount of any salary received by Mr. Preece in that year. He should be able to provide the Form W-2's for the year 2000 but he has not provided that information, which indicates that he may not want us to see the amount of salary that he took in that year.
2. Mr. Preece provided copies of the depreciation schedules for the years 2000 and 2001 as requested in Interrogatory No. 11. The year 2000 depreciation schedule does not show an asset or assets with a cost basis of \$514,933 being removed from the schedule. However, a tie-out of the beginning of the year balance in buildings and other depreciable assets per the 2000 Form 1120S, Page 4, Schedule L, Column (a), Line 10a to the end of the year balance in buildings and other depreciable assets per the 2000 Form 1120S, Page 4, Schedule L, Column (c), Line 10a indicates that there is an unaccounted for decrease in buildings and other depreciable assets of \$514,933. See attached schedule for details. I would think that if \$514,933 of depreciable assets were removed from the books, the sole shareholder would have some idea what was removed!!

3. Mr. Preece provided some additional information regarding Interrogatories No. 16, 21 and 22, which he signed and had notarized. He did not provide a detailed breakdown as requested in the interrogatories, but made some very basic comments regarding what was included in repairs and maintenance expenses, telephone expenses and training and education expenses. His reluctance to provide detail regarding the repairs and maintenance, telephone expense and training and education expense leads me to conclude that he paid some of his own personal expenses through the corporation, and he does not want us to look at the detail included in these accounts. Mr. Preece should be able to produce the detailed accounting records (i.e. general ledger account detail) for these accounts (and other accounts, such as travel, bank charges, commissions, insurance, supplies and miscellaneous expenses as requested in the interrogatories) if he has maintained adequate accounting records for the corporation for tax purposes. If the Internal Revenue Service audited the corporation, they would request to see the detail in these accounts because they review expenses paid by the corporation to see if they are legitimate business expenses. I find it difficult to believe that Mr. Preece does not have adequate, detailed accounting records for the corporation which would include detailed general ledgers or detailed year to date account histories. His lack of compliance with the requests for account detail in the interrogatories leads me to conclude that he does not want these records reviewed because he has something to hide (i.e. possibly paying personal expenses through the corporation).
4. Mr. Preece signed and had notarized his responses to the interrogatories that he provided in a letter dated April 18, 2003. The signing and notarizing of his responses is meaningless, because as I pointed out in my letter dated May 13, 2003, Mr. Preece did not provide most of the information requested in the interrogatories and the information he did provide was vague, unclear, inaccurate and incomplete. Signing and notarizing incomplete and inaccurate information does not make it any more valid.

Helicopter Flight, Inc. is a closely held corporation with the sole shareholder being Mr. J. Bruce Preece. I believe Mr. Preece has failed to make the formal distinctions between corporate and individual property or funds. I believe that the corporate entity should be disregarded and that Mr. Preece should be held personally liable for Helicopter Flight, Inc.'s obligations for the following reasons:

1. The corporation was undercapitalized in the years 1999, 2000, and 2001 based on the balance sheets included in the 2000 and 2001 Form 1120S U. S. Income Tax Returns for an S Corporation. At December 31, 1999, 2000 and 2001 liabilities exceeded assets by \$156,752, \$352,083, and \$247,013, respectively. The company was in financial trouble a long time before their dealings with Central Boiler, Inc.
2. HFI has failed to observe the corporate formalities. The corporate minutes for the years 1996 through 2002 did not include the approval of any leases with Mr.

Preece or the payment of any rent to Mr. Preece, even though the corporation was paying rent to Mr. Preece in the years 2000 and 2001 according to his responses to the interrogatories. Payments of rent to shareholders and any leases with shareholders or other related parties should be documented and approved in the corporate minutes. The last lease with Mr. Preece approved in the corporate minutes was for a term of January 1, 1995 to December 31, 1995. In addition, the corporate minutes did not include sufficient detail or the approval of sales, leases and leasebacks of equipment with HFI Aircraft Leasing Corporation or HFI Aviation Services, Inc., which would be related corporations because Mr. Preece is also a shareholder in those entities. The corporate minutes do not include any detail regarding salary or wages paid to Mr. Preece. The January 5, 2001 and the July 30, 2002 minutes both state, "The chairman reported because of cash flow needs for the corporation, the corporation was unable to pay the president a salary." Mr. Preece was in fact paid a salary of \$10,000 in the year 2001. Compensation paid to officers and shareholders should be documented and approved in the corporate minutes. The corporate minutes for the years 1999 through 2002 do not include any information regarding debts with financial institutions other than that the corporation entered into a loan for \$248,000 with Textron for the purchase of a Navajo Fixed Wing Twin Engine Aircraft. Debts owed to Security Bank USA were not discussed even though information provided by Mr. Preece as a part of the interrogatories indicates that new loans were obtained during this time period. The corporate minutes or resolutions should indicate the approval of any new debt. The corporate minutes do a poor job of documenting the corporation's activities and do not contain a lot of pertinent data that would normally be included in them especially in regards to related party transactions.

3. For the years 2000 and 2001, the corporation did not paid any dividends to Mr. Preece. However, I would not expect a corporation that was in such poor financial condition to pay dividends to its shareholder.
4. Helicopter Flight, Inc. was insolvent at the time the transaction for the trade-in of Central Boiler, Inc.'s helicopter and purchase of a helicopter by Central Boiler, Inc. was entered into. The corporate tax returns show that for the years 1999, 2000 and 2001 liabilities exceeded assets by \$156,752, \$352,083 and \$247,013, respectively. The corporate income tax returns showed a tax loss of \$157,993 and a book loss of \$195,331 for the year 2000 and a tax loss of \$299,040 and a book loss of \$324,982 for the year 2001. The corporation was experiencing financial difficulties long before the transaction with Central Boiler, Inc. and Mr. Preece had to be aware of it since he would have signed the income tax returns. The poor financial condition of the corporation cannot be blamed on September 11, 2001, as Mr. Preece would like us to believe.
5. Because Mr. Preece has failed to provide the information requested by the interrogatories, it is not possible to prove that Mr. Preece used the corporation to pay some of his personal expenses or to prove that he shifted money around

between his various corporations to hide assets and create confusion. However, his failure to provide the requested information and his vague, unclear, and inaccurate responses to the interrogatories leads me to believe that Mr. Preece is purposely withholding information that may be useful in Central Boiler Inc.'s lawsuit.

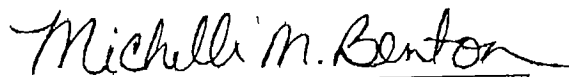
6. Even though the corporation was experiencing severe financial difficulties and incurring large financial losses for its size, Helicopter Flight, Inc. paid rent to Mr. Preece of \$52,335 in the year 2000 and \$30,000 in the year 2001 according to his response to the interrogatories and paid a salary to Mr. Preece of \$10,000 in 2001 according to the Form W-2's when he had not received a salary in the past according to his deposition. Normally, a corporate shareholder would not pay himself rent or other compensation when the corporation is experiencing large losses and financial difficulties. In addition during the year 2001, I believe that Helicopter Flight, Inc. loaned \$94,575 to HFI Aviation Services, Inc., which is a corporation owned by Mr. Preece that operates as the manager for the Moorhead airport. A note receivable listed as "N/R-Moorhead" is shown on the 2001 Form 1120S, Schedule L Balance Sheet, Line 6 Other Current Assets. This note receivable increased from \$138,130 to \$232,705 in the year 2001. Mr. Preece may have transferred money from HFI to HFI Aviation Services, Inc. as a way to get money out of HFI for his own personal use. Once the money was transferred to HFI Aviation Services, Inc. Mr. Preece could have taken it out of that corporation. Unfortunately I do not have copies of the tax returns for HFI Aviation Services, Inc. so I cannot see where the money went.
7. The corporate minutes indicate that on July 29, 1999 Al Ludwig was elected as vice president of Helicopter Flight, Inc. The minutes do not indicate if any compensation was paid to Mr. Ludwig. It appears that Mr. Ludwig served on the Board of Directors until Mr. Scott Schramm was elected to the office of vice president on January 5, 2001. The minutes do not indicate if any compensation was paid to Mr. Schramm. The minutes indicate that neither Mr. Ludwig nor Mr. Schramm presented any information at the Board meetings and Mr. Preece as president and chairman led all discussions. It appears that Mr. Schramm only served as vice president for one year and that at the July 30, 2002 Board meeting, that no vice president was elected and the Mr. Preece became the sole Board member.
8. The lack of information provided by Mr. Preece in response to the interrogatories indicates that there is an absence of adequate corporate records or that Mr. Preece is withholding information that may be useful to Central Boiler, Inc. in its lawsuit.
9. Mr. Preece has not explained the increase of \$430,052 in "additional paid in capital" that occurred during the year 2001. An increase in additional paid in capital indicates that the shareholder of the corporation, Mr. Preece, contributed money to the corporation, personally assumed some of the debts of the corporation, or loans from the shareholder to the corporation were converted to

equity. The balance sheet in the 2001 tax return indicated that there were no loans from the shareholder as of the beginning of the year that could have been converted to equity. Surely, Mr. Preece would remember if he contributed \$430,052 of his personal money to the corporation or if he personally assumed corporate debt of \$430,052 that he would become responsible for making payments on!! This is an unusual transaction, and as such, should be easily explained. Once again, this indicates a lack of adequate corporate records when the corporation is involved in transactions with related parties and Mr. Preece, its sole shareholder.

In conclusion, I believe that based on the review of Mr. Preece's responses to the interrogatories (which were vague, unclear and very often inaccurate), the lack of information provided by Mr. Preece in response to those interrogatories, the lack of corporate records provided by Mr. Preece, and the knowledge that Mr. Preece had regarding the financial condition of the corporation at the time it entered into the transaction with Central Boiler, Inc. that the corporate entity should be disregarded and that Mr. Preece should be held personally liable for Helicopter Flight, Inc.'s obligations.

If you have any questions or comments regarding this letter, please contact me at (218) 681-4287.

Sincerely,



Michelle M. Benton, CPA
Partner

Helicopter Flight, Inc.Schedule to Tie-Out 2000 Form 1120S, Page 4,Schedule L, Line 10a Buildings and OtherDepreciable Assets to Depreciation Schedule

Balance at Beginning of Year (January 1, 2000) Per
2000 Form 1120S, Page 4, Schedule L, Line 10a,
Column (a)

\$1,143,448

Equipment Purchased in the Year 2000 Per
2000 Federal Depreciation Schedule and Per Form
1120S, Form 4562:

| | |
|--------------------------|--------|
| 1. '94 Robinson R-22 | 85,000 |
| 2. Building Improvements | 29,252 |
| 3. Cart | 665 |
| 4. Equip. Metro | 683 |

Equipment Sold in the Year 2000 Per 2000 Federal
Depreciation Schedule and Per Form 1120S, Form 4797:

| | |
|----------------------|----------|
| 1. Airplane-Moorhead | (52,000) |
| 2. 97 Mitsubishi | (11,530) |

Balance at End of Year (December 31, 2000) Should
Be Based on Changes Reported on Federal
Depreciation Schedule and Tax Return

1,195,518

Balance at End of Year (December 31, 2000) Per
2000 Form 1120S, Page 4, Schedule L, Line 10a,
Column (c)

680,585

Net Decrease in Buildings and Other Depreciable
Assets Not Accounted For On 2000 Federal
Depreciation Schedule Provided or on Form 1120S,
Form 4797

\$514,933

Note: The beginning balance on the 2000 Federal Depreciation Schedule did not include the asset or assets with a cost basis of \$514,933 that was included in the figure reported on the beginning of the tax year balance per Form 1120S, Page 4, Schedule L, Line 10a. At some during 2000, an asset or assets with a cost basis of \$514,933 disappeared from buildings and other depreciable assets with no audit trail left on the depreciation schedule.

13-
STATE OF MINNESOTA
COUNTY OF ROSEAU

led 8/28/02
Teresa McDonnell
Court Administrator
Roseau, Minnesota 56751
tm
Court Administrator/Deputy

IN DISTRICT COURT
NINTH JUDICIAL DISTRICT

Central Boiler, Inc.,

Plaintiff,

vs.

Helicopter Flight, Inc. and J. Bruce Preece,

Defendants.

Civil No. C1-02-000369

**JUDGMENT AGAINST
HELICOPTER FLIGHT, INC.**

EXHIBIT

tabbies
12

The above-entitled action came on to be heard at the Courthouse in the City of Roseau, County of Roseau, State of Minnesota, on the 28th day of August, 2002. It appearing to the Court that personal service of the summons and complaint was made upon defendant Helicopter Flight, Inc. as is shown on the admission of service attached to said summons and complaint; and plaintiff and defendant Helicopter Flight, Inc. having entered into a stipulation for judgment, a copy of which is on file with the Court; and the Court being fully advised in the premises, having duly ordered judgment in favor of the plaintiff and against the defendant Helicopter Flight, Inc.;

NOW, THEREFORE, upon the motion of Edward F. Klinger, attorney for plaintiff, and upon all the records, papers and files in this action,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the plaintiff have and recover from the defendant Helicopter Flight, Inc. the following:

1. The sum of Two Hundred Ninety Six Thousand Four Hundred Fourteen and 00/100 Dollars (\$296,414.00) together with interest at the judgment rate from and after May 1, 2002.
2. Statutory costs and disbursements herein to be taxed and allowed by the Clerk. in the sum of \$142.00, making a total judgment in favor of the plaintiff and against the defendant in the sum of Two Hundred Ninety Six Thousand Five Hundred Fifty Six and 00/100 Dollars (\$296,556.00).

WITNESS THE HONORABLE Donna K. Dixon, Judge of District Court, and my hand and seal of this Court this 28 day of August, 2002.

Teresa McDonnell
Clerk of Court

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

JAMES BRUCE PREECE,

Debtor

Bankruptcy No. 03-44978
Chapter 7

Adversary No. 03-4265

Ken Schoenfelder, Blue Skies, Inc.,

Plaintiff,

vs.

James Bruce Preece,

Defendant.

**SECOND AMENDED
COMPLAINT**

EXHIBIT

13

For their Complaint against Defendant, Plaintiff states and alleges as follows:

1. This court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 1334, 157.
2. This is a core proceeding pursuant to 28 U.S.C. § 157 (b)(2)(I).
3. Plaintiff Blue Skies, Inc. ("BSI") is a Minnesota corporation doing business at 2331 Pine Star Lane SE, Rochester, Minnesota.
4. Helicopter Flight, Inc. ("HFI") is a Minnesota corporation doing business at 5930 Lakeland Avenue North, Minneapolis, Minnesota.
5. At all times relevant herein, James Bruce Preece has been the sole shareholder and President of HFI.
6. At all times relevant herein, James Bruce Preece is and was the alter ego of HFI, and is responsible for actions taken by HFI and his own actions, individually.
7. On August 3, 2001, Richard S. Stanger ("Stanger") purchased a Robinson helicopter, model R44, Serial No. 1090 and registration number 240RM (the "Helicopter").
8. In November of 2001, Stanger entered into a listing agreement with Defendant for the sale of the Helicopter. Under this Agreement Defendant was appointed as sales agent for a period of ninety days to sell the Helicopter for \$335,000.00. In exchange Defendants were to receive a commission of five percent of the sales price. Stanger delivered

possession of the Helicopter to Defendants at approximately the same time.

9. By the terms of the Agreement, Defendant's appointment as Sales Agent would have expired on approximately February 20, 2002.
10. In March of 2002, Defendant contacted Plaintiff about a loan/purchase transaction regarding the Helicopter.
11. Prior to the contact in March of 2002, Defendant had not communicated with Plaintiff for a period of several years.
12. Defendant represented that he had the present ability to commit ownership and possession of the Helicopter to Plaintiff.
13. The terms of the arrangement proposed by Defendant to Plaintiff was memorialized in a writing signed by both parties and attached hereto as Exhibit "A."
14. Under the terms of Exhibit "A" Plaintiff was to transfer \$260,000.00 to Defendant for the purpose of acquiring the Helicopter. In the event Defendant did not repay the \$260,000.00, plus \$10,000.00, on or before May 21, 2002, Defendant was to transfer the Helicopter to Plaintiff and deliver an FAA Aircraft Bill of Sale to Plaintiff for the Helicopter.
15. On March 22, 2002, Plaintiff wire transferred \$260,000.00 to Defendant (the "Funds").
16. Defendant did not use the Funds to acquire title to the Helicopter. Instead he diverted it to his own use for other purposes.
17. At approximately the same time Defendant diverted the Funds, he was involved in a second claim by Dennis Brazier in which Dennis Brazier claimed that he had paid \$260,000.00 for a helicopter, but had not received the helicopter.
18. At the time Defendant diverted Plaintiff's Funds, he had no present ability to repay the funds to Plaintiff and he had no idea how he would go about repaying them.
19. Defendant has not repaid any of the Funds to Plaintiff.
20. On May 30, 2002, Defendant made out an FAA Aircraft Bill of Sale for the Helicopter, executed it, and delivered it to Plaintiff.
21. Neither Defendant nor HFI owned the Helicopter at the time Defendant accepted the Funds from Plaintiff, nor at the time Defendant delivered a Bill of Sale for the Helicopter to Plaintiff.
22. Defendant never informed Plaintiff that Stanger owned the Helicopter.

23. Defendant had never informed Stanger that Defendant had ostensibly sold the Helicopter to Plaintiff for \$260,000.00.
24. Upon learning about the transaction, Stanger asserted his ownership rights in the Helicopter.
25. Plaintiff commenced a lawsuit against Defendant in Olmsted County District Court in July of 2002.
26. The Olmsted County District Court entered summary judgment determining that Stanger was the rightful owner of the Helicopter.
27. Defendant filed his bankruptcy petition on July 11, 2003, before a final Judgment was entered against him in the State Court action.

COUNT I

28. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
29. Defendant obtained \$260,000.00 from Plaintiff by fraud, false pretenses or actual fraud.
30. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(2)(A).

COUNT II

31. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
32. In the alternative, Defendant obtained \$260,000.00 from Plaintiff by using a statement in writing that was materially false respecting Debtor's financial condition.
33. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(2)(B).

COUNT III

34. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
35. In the alternative, Defendant converted \$260,000.00 given to him by Plaintiff for the express purpose of acquiring the Helicopter to his own use and deprived the Plaintiff thereof.

36. Defendant obtained \$260,000.00 from Plaintiff by embezzlement and/or larceny.
37. Defendant owes a debt to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(4).

COUNT IV

38. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
39. In the alternative, the document executed by the parties on March 21, 2002, (Exhibit "A") constitutes an express trust in which Plaintiff is the settlor and beneficiary and Defendant was the trustee (the "Trust").
40. Plaintiff delivered \$260,000.00 to Defendant in trust to be used to acquire the Helicopter.
41. Defendant's use of Plaintiff's funds for a purpose other than according to the terms of the Trust constitutes a defalcation while acting in a fiduciary capacity as trustee.
42. Defendant is indebted to Plaintiff in the amount of \$260,000.00 for the improper use of the Trust res.
43. Defendant's debt to Plaintiff is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(4).

COUNT V

44. Plaintiff incorporates and realleges all paragraphs preceding and following this Count herein.
45. In the alternative, Defendant's conversion of Plaintiff's \$260,000.00 constitutes a willful and malicious injury by Defendant to another entity or the property of another entity.
46. Defendant is indebted to Plaintiff in the amount of \$260,000.00 which is not dischargeable in bankruptcy pursuant to 11 U.S.C. § 523 (a)(6).

WHEREFORE, Plaintiff prays the Court enter its Judgment as follows:

1. Entering Judgment in favor of Plaintiff and against Defendant in the amount of \$260,000.00.
2. Declaring that such debt is not discharged by Defendant's bankruptcy filing.
3. Declaring that James Bruce Preece was and is the alter ego of Helicopter Flight, Inc., and therefore, responsible for all actions taken by HFI and his own actions, individually.

4. Such other and further relief as the Court deems just and equitable.

Dated: November 17, 2003.

DUNLAP & SEEGER, P.A.

By: /e/ Michael S. Dietz

Michael S. Dietz

Registration No. 188517

Attorneys for Plaintiffs

206 South Broadway, Suite 505

Post Office Box 549

Rochester, MN 55903-0549

(507) 288-9111

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MINNESOTA

In re:

JAMES BRUCE PREECE,

Debtor

Bankruptcy No. 03-44978
Chapter 7

Adversary No. 03-4265

Ken Schoenfelder, Blue Skies, Inc.,

Plaintiff,

vs.

James Bruce Preece,

Defendant.

UNSWORN CERTIFICATE OF SERVICE

I, Julie C. Johnson, declare under penalty of perjury that on November 17, 2003, I mailed copies of the following:

SECOND AMENDED COMPLAINT

by United States Mail, postage pre-paid, to each entity named below at the address stated below:

JAMES BRUCE PREECE
ASF/HELICOPTER FLIGHT INC
AIRCARE EXECUTIVE CHARTER & SECURITY
HFI AVIATION SERVICES
5930 LAKELAND AVENUE NORTH
MINNEAPOLIS MN 55428

THOMAS F. MILLER
ATTORNEY AT LAW
STE 305
715 FLORIDA AVE S
MINNEAPOLIS MN 55426

UNITED STATES TRUSTEE
1015 U S COURTHOUSE
300 SOUTH 4TH STREET
MINNEAPOLIS MN 55415

Executed on November 17, 2003.

Signed: 

Julie C. Johnson
DUNLAP & SEEGER, P.A.
P O BOX 549
ROCHESTER MN 55903-0549
(507) 288-9111

STATE OF MINNESOTA
COUNTY OF OLMSTED

DISTRICT COURT – CIVIL DIVISION
THIRD JUDICIAL DISTRICT

Blue Skies, Inc.,

Plaintiff,

vs.

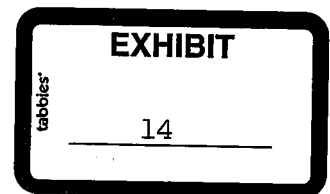
J. Bruce Preece, Helicopter Flight, Inc.,
Richard S. Stanger, Martha S. Stanger,
And Dairy State Bank,

Defendants.

Court File No: 55-C7-03-000408
Case Type: Contract

AFFIDAVIT OF
RICHARD S. STANGER

APR - 1 2003



STATE OF MINNESOTA)
) ss.
COUNTY OF OLMSTED)

Richard S. Stanger, being first duly sworn, deposes on oath and states as follows:

1. I am one of the Defendants in the above-entitled action.
2. In June of 2001, I agreed to purchase a Robinson R44 Clipper helicopter registration number N240RM, from Defendant Helicopter Flight, Inc. (HFI), for the amount of \$344,910.00, which included delivery, a post-delivery inspection, flight instruction and the aircraft's first 100-hour inspection.
3. This was a new aircraft that was available for sale from HFI because a prior sale had fallen through. HFI was listed as the owner on the Bill of Sale (Ex. 1).
4. To finance this purchase, my wife, Martha S. Stanger, and I borrowed \$300,000.00 from Defendant Dairy State Bank, executing a chattel security agreement on June 28, 2001 (Ex. 2). On the same date I also executed a business note for \$300,000.00 (Ex. 3), payable on September 28, 2001, secured by a real estate security agreement (Ex. 4). The real estate in question is our home in Rice Lake, Wisconsin.
5. The business note was renewed on September 28, 2001 (Ex. 5), on February 18, 2002 (Ex. 6), and on October 28, 2002 (Ex. 7). This last note became payable in full on October 18,

2002. The UCC financing statement for the chattel security agreement was filed on July 16, 2001 (Ex. 8).

6. In November of 2001 I decided to sell the helicopter, and entered into an agreement with HFI, through its President, Defendant Bruce Preece, in which HFI was authorized to serve as my exclusive sales representative for a period of 90 days. HFI stated that the retail price of the aircraft was \$345,660.00, but that because of the economy I would be lucky to get \$315-320,000.00. Preece stated he would forward all serious offers to me and would not agree to any sale without my approval (Ex. 9). HFI kept the helicopter at its business premises at Crystal Airport.

7. For a number of months thereafter I had only occasional contact with HFI. Preece notified me that he had made contact with a few potential buyers, but nothing had come of these discussions. Preece also said HFI wanted to buy the helicopter with a partner, whose name he did not disclose, for powerline survey work, but this transaction also never happened.

8. In approximately April of 2002, while I was on a hunting trip in Alaska, my wife called me to notify me that she had been contacted by a mechanic who worked for HFI. The mechanic had told her that the helicopter had been moved away from HFI. However, when I contacted Bruce Preece about this, he assured me there was no problem.

9. After I returned from Alaska I was contacted by the Plaintiff, Ken Schoenfelder. For the first time I learned that Schoenfelder had taken possession of the helicopter. I had never given HFI permission to transfer possession of the helicopter to any other person, and HFI had not notified me of any pending sale or other transaction involving Schoenfelder or anyone else. Schoenfelder told me he had purchased the helicopter and was trying to get it registered with the FAA. The helicopter carried a temporary registration statement showing that I was the owner.

10. In late June or early July of 2002 I met with Schoenfelder and Preece to try to resolve the situation. Schoenfelder stated that he had taken a security interest in HFI's hangar at Crystal Airport to secure a loan for \$260,000.00 he had made to HFI. Schoenfelder further stated that he had not filed the UCC financing statement securing the loan. I also learned that Schoenfelder and HFI had agreed to buy the helicopter together, as partners. Preece told me he was trying to get additional financing from a bank, and the rest of the money would be available soon. Before this meeting I was completely unaware of the agreement between HFI and Schoenfelder.

11. After Preece left the meeting Schoenfelder showed me an FAA Bill of Sale that HFI had executed. Schoenfelder wanted to file the Bill of Sale with the FAA in order to get the helicopter registered in his name. However, Schoenfelder said Preece had entered an incorrect serial number, which Schoenfelder had crossed out; Schoenfelder said he entered the correct number and sent the document to the FAA, but the FAA returned it because it will not accept altered documents.


12. The arrangement I believed we had worked out at this meeting was set forth in HFI's letter to me dated July 16, 2002 (Ex. 10). In order to be sure that the aircraft was insured, I agreed to lease the helicopter to HFI for 30 days while HFI was finalizing the sale for the amount of \$307,000.00, while HFI agreed to pay me \$165.00 per flight hour for the use of the helicopter if the sale was not completed after 30 days. HFI also agreed to pay for the hull and liability insurance. Additionally, it was agreed that Schoenfelder could sublease the helicopter until the sale was finalized. The agreement did not include any specific reference to a sale of the aircraft to Schoenfelder.

13. HFI also agreed to refund \$7,000 as the brokers' fee because HFI was not acting as my broker; the arrangement was that I would sell the helicopter to HFI, which would own it jointly with Schoenfelder.

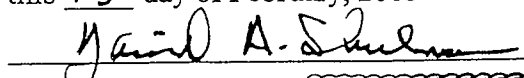
14. I have never been paid any amount of money by HFI or Schoenfelder, either for the sale of the aircraft or for any of the agreed-upon lease payments. The aircraft is still registered under my name with the FAA. However, I am obligated to continue to make payments on the note with Dairy State Bank, while Schoenfelder retains possession of the helicopter and has refused to return it.

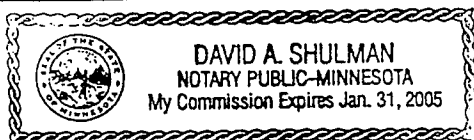
FURTHER YOUR AFFIANT SAYETH NOTHING.

Dated: 02/15/03


Richard S. Stanger

Subscribed and sworn to before me
this 15th day of February, 2003


Notary Public



COUNTY OF OLMSTED

THIRD JUDICIAL DISTRICT

Plaintiff,

Case Type: Contract

VS.

Defendants.

**AFFIDAVIT OF KEN
SCHOENFELDER**

EXHIBIT

15

STATE OF MINNESOTA)
) SS
COUNTY OF OLMSTED)

Ken Schoenfelder, being first duly sworn, upon oath states and alleges as follow:

1. I have personal knowledge of the matters hereinafter referred to.
2. I am the president of Blue Skies, Inc. (BSI) and was BSI's president at all times relevant to the present action.
3. During all of my contact with J. Bruce Preece (Preece) and Helicopter Flight, Inc. (HFI) from approximately March 2002 through July 2002, I was acting on behalf of BSI related to the sale of a 2001 Robinson R44 Clipper Helicopter (helicopter).
4. Preece contacted me in March 2002 and told me HFI was going to buy the helicopter. He asked me to loan HFI \$260,000 for its purchase. Preece told me once he purchased the helicopter he was going to attempt to sell it for a profit. We were to share the profit from the sale. However, in the event Preece failed to sell the helicopter on or before May 21, 2002, I would be entitled to possession of the helicopter for the sale price of \$250,000. The specifics of the agreement are outlined in the written contract attached hereto as Exhibit A.

EXHIBIT

A

5. The contract was secured by a Promissory Note in the amount of \$270,000 and a UCC Financing Statement related to HFI's real estate. Those documents are attached hereto as Exhibit B and Exhibit C.
6. I paid HFI \$260,000 in compliance with the contract. Preece told me HFI would purchase the helicopter using the \$260,000.
7. HFI and Preece failed to sell the helicopter on or before May 21, 2002. Therefore, Preece told me that HFI had the authority to sell the helicopter to me for the \$250,000 sale price and would transfer the ownership and good title to BSI.
8. Preece provided me with an Aircraft Bill of Sale identifying HFI as the seller of the helicopter. That Bill of Sale is attached hereto as Exhibit D. Following May 21, 2002, I filled in the Bill of Sale identifying BSI as the Purchaser. The Bill of Sale contained an incorrect serial number; I amended the serial number identifying the correct helicopter. A copy of the completed Bill of Sale is attached hereto as Exhibit E.
9. Following May 21, 2002, I attempted to register the helicopter with the FAA in BSI's name. At that time, Robinson Helicopter Company, Inc. (Robinson) in Torrance, California, was identified as the registered owner. I requested Preece provide me with a copy of the Bill of Sale from Robinson to HFI. He failed to provide me with the document. Therefore, I sent a letter to Robinson requesting a copy of the Bill of Sale. A copy of that correspondence is attached hereto as Exhibit F.
10. In early July 2002, I attempted to register the helicopter with the FAA once again. The FAA informed me it was missing the Bill of Sale from Richard S. Stanger to HFI and would not be able to register the helicopter in BSI's name until it was provided. This was the first indication I had that Stanger was the helicopter's prior owner. I then contacted Preece in an attempt to secure the Bill of Sale needed by the FAA. Preece assured me he would send me the Bill of Sale. To date I have not received the necessary documentation to register the helicopter.
11. In mid-July 2002, I met with Preece and Stanger. Preece told Stanger during that meeting that he would secure financing and pay Stanger \$307,000.00 for the helicopter within thirty (30) days from July 16, 2002.
12. BSI has been insuring the helicopter since June 2002 and is insuring it to date.

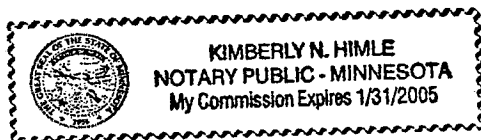
13. My agreement with HFI allowed me the opportunity to purchase the helicopter for an exceptionally good price. It would be impossible for me to purchase a helicopter of comparable quality for that price.

FURTHER YOUR AFFIANT SAYETH NOT.

Ken Schoenfelder
Ken Schoenfelder

Subscribed and sworn to before me
this 21st day of April, 2003.

Kimberly N. Himle
Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

vs.

James Bruce Preece,

Defendant.

Adversary No. 03-4285

**MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS ANSWER
BASED ON FAILURE TO COMPLY
WITH DISCOVERY**

As the affidavit of Edward F. Klinger reveals, defendant has not complied with discovery. Defendant has failed to answer interrogatories within the appropriate time limits and has refused to comply after notice sent to his attorney.

Pursuant to Rule 37 of the Federal Rules of Civil Procedure (a)(d), a person or party who fails to serve response to interrogatories subjects himself or herself to appropriate orders pursuant to (b)(A)-(e) of the aforementioned rule. Moving party submits that under the circumstances of this case, judgment may be and should be entered against defendant debtor.

This memorandum incorporates by reference moving party's summary judgment memorandum, as well as the aforementioned affidavit.

Dated this 27th day of August, 2004.

Respectfully submitted,

VOGEL LAW FIRM

By 

Edward F. Klinger

Attorneys for Plaintiff

215 30th Street North

P.O.Box 1077

Moorhead, MN 56561-1077

(218) 236-6462

Attorney ID No. 56625

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

AFFIDAVIT OF EDWARD F. KLINGER

James Bruce Preece,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF CLAY)

Edward F. Klinger, being duly sworn, states and deposes:

1. That he is the attorney for the moving party.
2. That on the 4th day of November, 2003, he served interrogatories upon the defendant and defendant's attorney.
3. That true and correct copies of said interrogatories are annexed as Exhibit A to this affidavit.
4. That said answers were not given to said interrogatories, and as a result thereof, your affiant forwarded a letter to defendant's attorney, a true and correct copy of which has been annexed as Exhibit B.
5. That no response has been received.
6. That attached to the memorandum in support of summary judgment are pertinent portions

of depositions taken of the defendant, both in a state court action prior to the commencement of this case, and also a deposition taken pursuant to notice in conjunction with the instant adversary proceeding.

7. That all documents which are attached to the memorandum were documents furnished by the defendant or are affidavits in support of summary judgment..

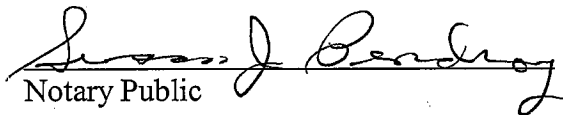
Further your affiant sayeth not.

Dated this 27th day of August, 2004.

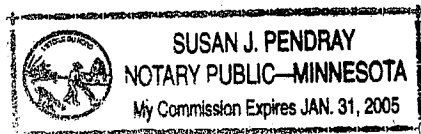


Edward F. Klinger

Subscribed and sworn to before me
this 27th day of August, 2004.



Notary Public



UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

**INTERROGATORIES TO
DEFENDANT**

James Bruce Preece,

Defendant.

EXHIBIT

A

PLEASE TAKE NOTICE that the plaintiff, Central Boiler, Inc., requests, pursuant to the applicable Rules of Civil Procedure and Local Rules, that the above-named defendant answer separately and fully in writing, under oath, within thirty (30) days after service of the interrogatories, the following interrogatories and identify, separately and in a manner suitable for use as a description in a subpoena, all sources of information and all records upon which defendants rely in answering the interrogatory or which pertain or relate to the information called for in the interrogatory.

"Identification" or "identify", when referring to an individual, a corporation or other entity, shall mean that defendant shall set forth the name, present or last known address, and if a corporation or other entity, its principal place of business, or if an individual, his title or titles, and by whom employed.

Interrogatory No. 1: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list the detail of all salaries and wages paid pursuant to line 8.

Interrogatory No. 2: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail to whom rent was paid (line 11).

Interrogatory No. 3: With respect to the December 31, 2000 tax return 1120S submitted by HFI, line 19, please list the detail of the bank charges totaling \$12,154.

Interrogatory No. 4: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list the detail of commissions paid on line 19.

Interrogatory No. 5: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail the insurance company expense of \$167,695 paid on line 19.

Interrogatory No. 6: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail a breakdown of the telephone expense of \$20,992 showing on line 19.

Interrogatory No. 7: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail a breakdown of all training and education expenses showing on line 19.

Interrogatory No. 8: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail a breakdown of the travel expenses showing on line 19.

Interrogatory No. 9: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail the items included in the miscellaneous expense of \$14,427 on line 19.

Interrogatory No. 10: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please list in detail a breakdown of the non-deductible penalties paid in the amount of \$36,645.

Interrogatory No. 11: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please provide a detailed explanation of the \$514,933 reduction in cost basis and the reason it was removed from the books.

Interrogatory No. 12: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please provide a detailed analysis of the mortgages and notes payable for the year 2000, setting forth to whom the debt is owed, all new borrowings and repayments.

Interrogatory No. 13: With respect to the December 31, 2000 tax return 1120S submitted by HFI, please provide the detail of customer deposits as of December 31, 1999 and December 31, 2000.

Interrogatory No. 14: With respect to the December 31, 2001 tax return submitted by HFI, please provide a detailed explanation of the \$3,322,529 decrease in sales from 2000 to 2001.

Interrogatory No. 15: With respect to the December 31, 2001 tax return submitted by HFI, provide in detail a breakdown of the salaries and wages paid of \$331,776 showing on line 8.

Interrogatory No. 16: With respect to the December 31, 2001 tax return submitted by HFI, please provide a detailed listing of the repair and maintenance expenses of \$32,641 showing on line 9.

Interrogatory No. 17: With respect to the December 31, 2001 tax return submitted by HFI, please provide the name, address and relationship, if any, of the parties who were paid \$58,752 rent showing on line 11.

Interrogatory No. 18: With respect to the December 31, 2001 tax return submitted by HFI, please provide a breakdown of the other deductions, credit card and bank charges of \$14,735

showing on line 19.

Interrogatory No. 19: With respect to the December 31, 2001 tax return submitted by HFI, please list in detail the insurance company expense of \$145,955 paid on line 19.

Interrogatory No. 20: With respect to the December 31, 2001 tax return submitted by HFI, please list in detail the supplies expense of \$35,527 paid on line 19.

Interrogatory No. 21: With respect to the December 31, 2001 tax return submitted by HFI, please list in detail a breakdown of the telephone expense of \$16,705 showing on line 19.

Interrogatory No. 22: With respect to the December 31, 2001 tax return submitted by HFI, please list in detail a breakdown of all training and education expenses showing on line 19.

Interrogatory No. 23: With respect to the December 31, 2001 tax return submitted by HFI, please list in detail a breakdown of the non-deductible penalties paid in the amount of \$24,872.

Interrogatory No. 24: With respect to the December 31, 2001 tax return submitted by HFI, please provide details on how the Bruce Preece note receivable of \$49,794 was paid.

Interrogatory No. 25: With respect to the December 31, 2001 tax return submitted by HFI, please provide details on the sale of the '75 Piper Navaho.

Interrogatory No. 26: With respect to the December 31, 2001 tax return submitted by HFI, please provide an explanation of the decrease in deposits.

Interrogatory No. 27: With respect to the December 31, 2001 tax return submitted by HFI, please provide a detailed analysis of the mortgages and notes payable for the year 2001 setting forth to whom the debt is owed, all new borrowings and repayments.

Interrogatory No. 28: With respect to the December 31, 2001 tax return submitted

by HFI, please provide the detail of customer deposits as of December 31, 2001.

Interrogatory No. 29: With respect to the December 31, 2001 tax return submitted by HFI, please provide details of the transaction and source of money contributed by James Preece regarding the additional paid in capital increase of \$430,052.

Interrogatory No. 30: As to paragraph 5 of your Answer, please state each and every fact upon which you rely to make such statement.

Dated this 4 day of November, 2003.

GUNHUS, GRINNELL, KLINGER,
SWENSON & GUY, LTD.

By 

Edward F. Klinger

Attorneys for Central Boiler, Inc.
215 30th Street North
P. O. Box 1077
Moorhead, MN 56561-1077
(218) 236-6462
Attorney ID No. 56625

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

**REQUEST FOR PRODUCTION
OF DOCUMENTS TO DEFENDANT**

James Bruce Preece,

Defendant.

Pursuant to the applicable Rule of Civil Procedure and Local Rules plaintiff, Central Boiler, Inc. requests you produce on or before December 4, 2003 at 9:00 a.m., specific documents which are noted hereinafter and are to be produced at the offices of Gunhus, Grinnell, Klinger, Swenson & Guy, Ltd., 215 North 30th Street, P.O. Box 1077, Moorhead, Minnesota 56560, the documents described below, for inspection and copying.

Please read the following instructions carefully. If you fail to produce any of the documents requested, then you must produce, at the designated time and place, a writing which states, in accordance with the following instructions, the reasons for such failure. In lieu thereof, you may send copies of said documents to the undersigned.

INSTRUCTIONS:

DOCUMENTS

The term "document" shall be construed to have the broadest possible meaning under Rule

34. The term shall include, but not be limited to, the original or any copy of correspondence, contracts, written agreements, records, tables, charts, graphs, schedules, reports, memoranda, notes, letters, telegraphs, messages, notes or reports of telephone conversations, minutes or reports of notes of conferences, books, journals, ledgers, checks and other similar instruments, instructions, communications, purchase orders, bills, bills of lading, photographs, phonographic records, tapes (whether audio or video), data contained on computer disk or other storage device, and any other written or printed material or tangible object whether produced or reproduced mechanically, electrically, or otherwise. The term "documents" is not limited to a writing in final form, but shall include preliminary, incomplete, handwritten or otherwise unpolished drafts.

PRIVILEGED DOCUMENTS

If any of the documents requested below are claimed by you to be privileged, you are requested for each such document to state that you are claiming a privilege with respect to it, and the grounds on which the privilege is claimed; and to identify the documents claimed to be privileged.

DESTROYED DOCUMENTS

If any of the documents requested below have been destroyed, or otherwise discarded, you are requested to identify the document and to state the reason for its discard or destruction and to identify the person authorizing that action.

DOCUMENTS NO LONGER IN YOUR POSSESSION

If any of the documents requested below were, or no longer are, in your possession, or subject to your control, identify such documents and state what disposition was made of such documents, and when.

DEFINITIONS:

1. The words "You" and "Your" mean the party or parties to whom the request is directed and all other persons acting on behalf of such party, including, but not limited to attorneys and their associates, investigators, agents, employees or other representatives.
2. The word "person" refers to any natural person and any association, joint venture, partnership, corporation or other entity.
3. Any word indicating gender shall include all genders.

IDENTIFY:

As used herein, the term "identify" shall require that the following information be provided with respect to the document:

- a. The full name or title of the document, or if untitled, the general character of the document as it would be described by a lay person;
- b. The date of document, or, if undated, the date upon which it was written or otherwise created;
- c. The identity of the person who wrote, authorized or otherwise created the document;
- d. A summary of the subject matter of the document;
- e. The name and address of the present or last known custodian of the document;
- f. The date upon which the document or a copy thereof was received by you or came to your attention;
- g. The identity of all persons who have received or examined the document on your behalf; and the date upon which each such person received or examined the document.

DOCUMENTS TO BE PRODUCED:

Request No.1: Each and every document which you contend supports the contentions in paragraph 5 of your answer.

Request No.2: Please itemize as to name and address of creditor, together with date that incurred each and every business loss incurred by Helicopter Flight, Inc., for the two-year period prior to filing the bankruptcy petition, and provide documents supporting said losses.

Dated this 4 day of November, 2003.

GUNHUS, GRINNELL, KLINGER,
SWENSON & GUY, LTD.

By 

Edward F. Klinger

Attorneys for Central Boiler, Inc.

215 30th Street North

P.O.Box 1077

Moorhead, MN 56561-1077

(218) 236-6462

Attorney ID No. 56625,

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

James Bruce Preece,

Defendant.

**PROOF OF SERVICE
BY MAIL**

STATE OF MINNESOTA

COUNTY OF CLAY

}
} ss.
}

The undersigned, being first duly sworn, says that a copy of the attached:

- Interrogatories to Defendant;
- Request for Production of Documents;

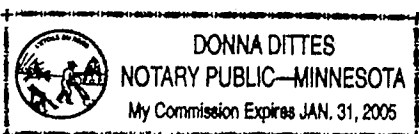
were served upon:

Thomas Miller
Attorney at Law
715 Florida Ave., So., Suite 305
Minneapolis, MN 55426

by enclosing the same in an envelope addressed to such attorney(s) and/or individuals at the above address(es) with postage fully prepaid and by depositing said envelope(s) in a United States Postal Service mailbox in Moorhead, Minnesota, on the 4th day of November, 2003.

Cheryl Abelman
Cheryl Abelman

Subscribed and sworn to before me this 4th day of November, 2003.



Donna Dittes
Notary Public, Clay County, MN



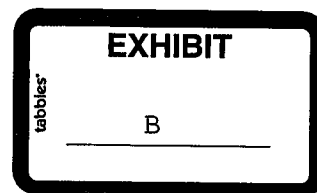
Edward F. Klinger

Phone: 218.236.6462 | Fax: 218.236.9873 | eklinger@vogellaw.com

August 9, 2004

Thomas F. Miller
Attorney at Law
715 Florida Avenue South
Suite 305
Minneapolis, MN 55426

RE: Central Boiler v. Bruce Preece
Our file: EFK-2646-1



Dear Mr. Miller:

I advised Bruce Preece at the deposition of the trial date, which is set for September 28, 2004.

As you know, it is consolidated with another matter, and we took a deposition of Mr. Preece on the 5th of August.

I fully intend to comply with all of the dictates of the second amended scheduling order, and would like to visit with you very early in September to make sure that we comply with the order.

My presumption is that I will be admitting both depositions of Mr. Preece, together with all of the exhibits which were attached.

If there is a particular date in early September that you would like to set up a conference call to begin the work on the pre-trial, please do not hesitate to contact me.

Otherwise, I would ask you to review all of the exhibits from both depositions and comply with paragraphs 4a and 4b of the pre-trial order.

I will try towards the end of August to do a stipulation for facts.

At the deposition, Bruce discussed the possibility of some sale of the remaining assets of the business. I told him that if any offer was to be made to my client, it should be in writing and emanate from you.

Thomas F. Miller
August 9, 2004
Page 2

Should you have any questions, please do not hesitate to contact me.

Very truly yours,

Edward F. Klinger
EFK/sjp

cc: Dennis Brazier

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

vs.

**PROOF OF SERVICE
BY MAIL**

James Bruce Preece,

Defendant.

STATE OF MINNESOTA

COUNTY OF CLAY

)
) ss.
)

The undersigned, being first duly sworn, says that a copy of the attached:

- Notice of Hearing and Motions
- Memorandum in Support of Motion for Summary Judgment
- Memorandum in Support of Motion to Dismiss Answer Based on Failure to Comply with Discovery
- Affidavit of Edward F. Klinger
- Order

were served upon:

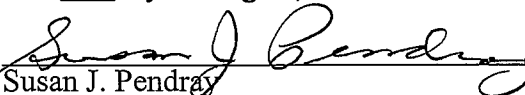
J. Bruce Preece
Helicopter Flight, Inc.
5930 Lakeland Avenue North
Minneapolis, MN 55428

Thomas F. Miller
Attorney at Law
715 Florida Avenue South, Suite 305
Minneapolis, MN 55426

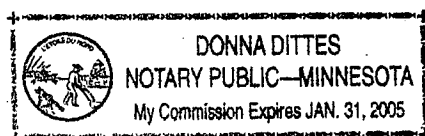
Brian F. Leonard, Trustee
100 S. 5th Street, Suite 1200
Minneapolis, MN 55402

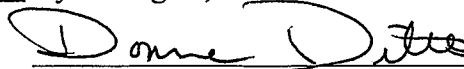
United States Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

by enclosing the same in an envelope addressed to such attorney(s) and/or individuals at the above address(es) with postage fully prepaid and by depositing said envelope(s) in a United States Postal Service mailbox in Moorhead, Minnesota, on the 27th day of August, 2004.


Susan J. Pendray

Subscribed and sworn to before me this 27th day of August, 2004.




Notary Public, Clay County, MN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

James Bruce Preece,

Debtor.

Bankruptcy No. 03-44978
Chapter 7

Central Boiler, Inc.,

Plaintiff,

Adversary No. 03-4285

ORDER

vs.

James Bruce Preece,

Defendant.

The above entitled matter came on before the Court on the 22nd day of September, 2004.

The Court having heard the representations of the parties, and being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. That plaintiff, Central Boiler, Inc., is entitled to a judgment in the amount of Two Hundred Ninety Six Thousand Five Hundred Fifty Six and 00/100 Dollars (\$296,556.00) together with interest at the judgment rate from and after August 28, 2002, and
2. That said judgment is determined to be non-dischargeable in bankruptcy.

Dated this ____ day of September, 2004.

BY THE COURT:

Nancy Dreher, Judge of Bankruptcy Court